

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-7115

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
NO. 75-7115

FIREBIRD SOCIETY, ET AL

Plaintiffs - Appellees

v.

MEMBERS OF THE BOARD OF FIRE COMMISSIONERS,
CITY OF NEW HAVEN, ET AL

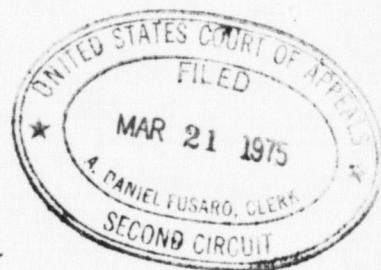
Defendants - Appellees

THE FIREFIGHTERS COMMITTEE TO PRESERVE
CIVIL SERVICE, ET AL

Intervenors - Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

JOINT APPENDIX



4

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL.

VS.

MEMBERS OF THE BOARD OF
FIRE COMMISSIONERS, ET AL.
and
CITY OF NEW HAVEN

CIVIL NO. 15,876

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ORIGINAL DOCKET SHEET MISSING

CIVIL DOCKET
UNITED STATES DISTRICT COURT

ORIGINAL DOCKET SHEET MISSING

Jury demand date:

C. For No. 103 Rev.

ROBERT C. ZAMPANO

TITLE OF CASE

ATTORNEYS

FIREBIRD SOCIETY, ET AL

For plaintiff:
Michael P. Koskoff
1241 Main Street
Bridgeport, Conn.

v.

MEMBERS OF THE BOARD OF
FIRE COMMISSIONERS, ET AL

David N. Rosen
265 Church Street
New Haven, Conn.

and

CITY OF NEW HAVEN

For defendant: Roger J. Frechette
~~Thomas E. Keyes, Jr.~~, Corp. Counsel
161 Church Street
New Haven, Conn.

J. Daniel Sagarin (For Intervenors)
855 Main Street
Bridgeport, Connecticut

W. Paul Flynn
132 Temple Street
New Haven, Conn.

STATISTICAL RECORD	COSTS	DATE 1975	NAME OR RECEIPT NO.	REC.	DISB.
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S. 5 mailed Clerk 2/6 Schless & 5 00

S. 6 mailed Marshal

asis of Action: Action brought

suant to 42 USC §§ 1981 and

83. by a minority group

aiming discrimination by

defendants

employment and promotions

the New Haven Fire Dept.

eks declaratory and injunc-

re relief and damages.

RULE 23 ALLEGATION.

3A

PROCEEDINGS

Date Order
Jury No.

10/13/5 Complaint, Verification, Motion to Produce Documents, Plaintiff's First Interrogatories to Defendants, Brief in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunctions, filed.

Appearances of Michael P. Koskoff and David Rosen, entered for plaintiffs.

Temporary Restraining Order, to expire 10 days from date, entered. Zampano, J. M-10/9/73.

Motion for Appointment of Sheriff Jacob G. Miller to Serve Process and Order thereon, filed and entered. Markowski, C. Copies to At Summons issued and together with copies of same and of Complaint, Motion, Interrogatories, Brief and attested copies of Temporary Restraining Order, handed to Attorney.

10/15 Motion for Expedited Discovery, filed by plaintiffs.

10/16 Preliminary Injunction, entered. Ordered that order of October 5, 1973 is extended until 5:00 P.M. Oct. 19, 1973 or further order of this court. Zampano, J. M-10/16/73 Copies to Attys Keyes, Koskoff and Rosen.

0/29 Preliminary Injunction extended until November 12, 1973 at 5:00 P.M. or until further order of this Court. Zampano, J. M-10/30/73 Copies mailed.

11/5 Dismissal of Action as to Defendant Frank Graziosa, filed by plaintiffs.

" Hearing on Plaintiffs' Motion for Expedited Discovery "over to 4:00 P.M. Chambers Conference." Zampano, J. M-11/6/73.

11/12 Preliminary Injunction entered extending order of October 5, 1973 (TRO) until Nov. 20, 1973 at 3:00 P.M. or further order of this court. Zampano, J. M-11/12/73 Copies mailed.

CIVIL DOCKET CONTINUATION

PROCEEDINGS

Date Order or
Judgment Entered

Hearing held after chambers conference 3:00 P.M. to 5:45 P.M. Court will enter an order on Wed., December 5, 1973. Court indicates that same will not be a consent order. The details of the Order which have been revealed to counsel in chambers will not be disseminated by any of the attorneys until Court signs the order. Motion of W. Paul Flynn to Intervene was granted in chambers. Motion to Dismiss as to Attorney Grazioso individually is granted.

Preliminary Injunction is extended to Wednesday, Dec. 5, 1973 at 5:00 P.M. Court adjourned at 6:00 P.M. Zampano, J. M-12/4/73

In-Camera Agreement (sealed by Order of Court on December 5, 1973) Zampano, J., filed.

Order, not agreed to but acquiesced in by all the parties, setting forth procedures to be followed, entered. Zampano, J. M-12/6/73 Copies mailed.

Appearance of Thomas F. Keyes, Jr., entered for Defendants The New Haven Board of Fire Commissioners, et als.

Motion for an Order making the City of New Haven a party defendant herein and directing the issuance and service of process upon it, filed by Plaintiffs.

Order entered making the City of New Haven a party defendant and directing Clerk to issue and serve process upon it.

Order endorsed as follows: "Filed with Court on November 28, 1973 and service made upon City of New Haven by hand delivery to Attorney Keyes in Judge's Chambers." Zampano, J. M-12/10/73

Motion for Attorneys' Fees, filed by Plaintiffs.

Amendment to Order of December 5, 1973, entered. Paragraphs 14, 16, 17, 18 and 21 amended. Zampano, J. M-1/22/74 Copies mailed.

	PROCEEDINGS
1/14 3/4	Order entered enjoining defendants, their agents, employees, etc., from making any assignments, promotions or appointments to the New Haven Department of Fire Services except with the consent of all parties, until further order of this Court, except that defendants may make assignments on a temporary acting basis. Zampano, J. M-3/4/74 Copies mailed.
5/21	Order entered enjoining all parties, their officers, etc. from disclosing to any person any material relating to any individual's examination score, test rating, efficiency rating, standing on promotion lists, etc; and that all copies of examination and efficiency rating scores and promotion lists presently under the control of any party or any of said party's officers, employees, agents or servants shall forthwith be turned over to counsel to that party. Zampano, J. M-5/21/74 Copies mailed.
5/22	Defendants' Answer, filed.
5/23	Placed on trial list.
5/28	Motion for Order Compelling Discovery, filed by plaintiffs. Informal Pre-Trial Conference scheduled for May 30, 1974, "Over to June 3, 1974 at 2:00 P.M." Zampano, J. M-5/28/74
6/3	Motion for Extension of Time to Comply with Order for Disclosure with Affidavit of Thomas F. Keyes attached, filed by defendants.
6/6	Order entered on defendants' Motion for Extension of Time to Comply with Order for Disclosure to July 1, 1974 granting same. Zampano, J. M-6/6/74. Copies mailed.
6/20	Interrogatories, filed by defendants.
7/2	Answer to Motion to Produce, filed by defendants.
7/3	Answers to Interrogatories, filed by defendants,
7/15	Notice to take Depositions of Francis J. Sweeney on July 18, 1974; Michael DePalma on July 18, 1974; Hubert C. Fernanders on July 18, 1974; Bartholomew Guida on July 19, 1974; Stanley Rogers on July 19, 1974; and James DeAngelis on July 19, 1974, filed by plaintiffs.
8/30	Order, acquiesced in by all parties, ordering that this Court's temporary restraining order of Oct. 5, 1973, as extended and modified by later orders, is hereby terminated; that this Court's order of Dec. 5, 1973, is hereby terminated; that any State statutes, municipal ordinances and regulations of the City Commissions in conflict with the terms of this Order are null and void to the extent necessary for compliance with the terms of this Order; and setting forth procedures re testing and hiring, entered. Zampano, J. M-9/3/74 Copies handed to all counsel on Aug. 30, 1974.
9/20	Motion of Firefighter's Committee to Preserve Civil Service, Inc. (FCPCS) and the individuals named in Exhibit A, on behalf of Themselves and of all persons in the New Haven Fire Department similarly situated to Intervene as Defendants and Cross Claimants, filed.
"	Affidavit of Albert Serletti, filed.
"	Interveners (FPCPS, et al) Motion to Reopen Order, filed.
"	Intervenors' Motion to Extend Time to File Appeal from Order of August 30, 1974, filed.
"	Order to Show Cause for appearance at New Haven at 10:30 A.M. on September 30, 1974, entered. Zampano, J. Attested copies of Order, copies of Motion to Intervene, Affidavit, and Motions to Reopen and to Extend Time, handed to the Marshal for service.
1/25	Return of Indifferent Person, Jacob G. Miller, filed.- Order to

FIREBIRD SOCIETY, ET AL v. MEMBERS OF THE BOARD OF FIRE

COMMISSIONERS, ET AL
PROCEEDINGSDate Order
Judgment No

DATE 9/1		
3/25 (Cont'd.)	Show Cause, Motions and Affidavits.	
3/30	(1) Firefighter's Committee to Preserve Civil Service, Inc. Motion to Intervene as Defendants and Cross Claimants; (2) Intervenors' (FCPS) Motion to Reopen Order; and (3) Intervenors' (FCPS) Motion to Extend Time to File Appeal from Order - "Over to 10/1/74 at 2:30 P.M." Zampano, J. M-10/1/74	
10/1	Intervenor's (F.C.P.C.S., et al) Memorandum in Support of Application for Intervention, filed.	
"	Hearing on (1) Motion of F.C.P.C.S. to Intervene as Defendants and Cross Claimants (2) Intervenors' (F.C.P.C.S. et al) Motion to Reopen Order; and (3) Intervenors' (F.C.P.C.S. et al) Motion to Extend Time to File Appeal from Order of August 30, 1974. Decision Reserved on all 3 motions. Intervenors' brief to be filed by 10/8; Defendants' Brief due 10/15; Plaintiffs' Reply Brief due 10/22; Court orders December Memorandums be Unsealed. Zampano, J. M-10/2/74	
10/4	Intervenors' Motion to Open Sealed Proceedings, filed.	
10/8	Intervenors' Offer of Proof, filed.	
10/10	Proposed Answer and Cross-Claim of Intervenors Firefighter's Committee for the Preservation of Civil Service, et al, filed.	
10/16	Intervenors' (F.C.P.C.S. et al) to Open Sealed Proceedings endorsed as follows: "Granted." Zampano, J. M-10/16/74 Copies mailed.	
10/22	Brief in Opposition to Application for Intervention, filed by plaintiffs. To AC2	
10/29	Brief in Opposition to Application for Intervention, filed by defendants. To AC2	
11/1	Applying Intervenors' (F.C.P.C.S. et al) Offer of Proof, filed.	
"	Applying Intervenors' (F.C.P.C.S. et al) Reply Brief with Supplemental Offer of Proof, filed.	
1975		
2/3	Ruling on Motion to Intervene, entered. The Applicants' Motion to Intervene and all related motions are denied. Zampano, J. M-2/3/75 Copies mailed.	
2/6	Application for Stay of Judgment Pending Appeal, filed by Intervening Applicants.	
"	Notice of Appeal from the ruling on Motion to Intervene filed on Feb. 3, 1975, filed by Intervening Applicants. Copies mailed to all counsel and to Clerk U.S.C.A. along with copy of Docket Entries.	
2/26	Appearance of Frank S. Meadow, Asst. Corporation Counsel entered for defendants.	
2/27	Application for Temporary Restraining Order, filed by Plaintiffs at hearing below.	
"	Hearing re Application for Stay of Judgment Pending Appeal. Plaintiff's Exhibits (A) Order to Show Cause and (B) affidavit of John Reardon in support of Order to Show Cause. Application for stay, granted for 10 or 14 days, or until such time that the Court of Appeals hears motion or Grants further extension of stay. Counsel to submit proposed order. Zampano, J. M-2/28/75	
3/1	Court Reporter's transcript of proceedings held October 1, 1974. Russell, R.	
3/13	Court Reporter's Notes of Proceedings of Feb. 27, 1975, filed. Russell, R.	
3/14	Order Directed To Board Of Fire Commissioners re the matter of appointments during period of stay, etc., entered. Zampano, J. M-3/5/75 Copies mailed.	

COMPLAINT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

THE FIREBIRD SOCIETY OF NEW HAVEN, INC.,)
GEORGE SWEENEY, EARL GEYER, CHARLES)
GOODSON, TIM WATKINS, CLARENCE SMITH,)
CHARLES HOLNESS, MARTIN GOODSON, DONALD)
HOLNESS, JIMMY LA BOONE, ROBERT MILLER,)
THOMAS BULLOCK, CLYDE STEWART, FLOYD)
WILLIAMS, CHARLES WHITTABY, RODNEY)
TAYLOR, ELIZAH GAUSUS, CLIFTON McCLURE,)
individually and on behalf of all others)
similarly situated.)

PLAINTIFFS)

15876

VS.)

CIVIL ACTION NO.)

THE NEW HAVEN BOARD OF FIRE)
COMMISSIONERS, MICHAEL DEPALMA, HUGH)
KEENAN, IV, HUBERT C. FERNANDERS, JAMES)
DeANGELIS, EDWARD PULCHALSKI, individually)
and in their capacity as New Haven Board)
of Fire Commissioners, THE NEW HAVEN)
CIVIL SERVICE COMMISSION, STANLEY ROGERS,)
FRANK GRAZIOSO, VINCENT VILLANO, CLARENCE)
M. WHITNEY, individually and in their)
capacity as New Haven Civil Service)
Commissioners, THE NEW HAVEN DEPARTMENT OF)
FIRE SERVICES, FRANCIS J. SWEENEY,)
individually and in his capacity as Chief)
of the New Haven Department Fire Services)
and BARTHOLOMEW GUIDA, individually and in)
his official capacity as Mayor of the City)
of New Haven.)

DEFENDANTS)

FILED

OCT 5 4 36 PM '73

U.S. DISTRICT COURT
NEW HAVEN, CONN.

COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiffs bring this action for declaratory and injunctive relief on their own behalf and on behalf of all others similarly situated to redress the injury done to them by defendants' policy and practice of discriminating on the basis of race, color and/or national origin against minority group members. Said minority group persons are currently being denied initial employment and promotion in the New Haven Fire Department. Plaintiffs seek immediate relief to enjoin assignment of any persons not members of plaintiffs' class who were appointed or promoted subsequent to assumption of jurisdiction of plaintiffs' complaint against defendants by the Equal Employment Opportunity Commission on July 24, 1973 and to enjoin any further appointments from current eligibility lists for hiring and promotion. Plaintiffs also seek permanent relief in order to secure their rights under Title VII of the Civil Rights Act of 1964, as amended and the Constitution of the United States.

2. Plaintiffs' action for injunctive relief is brought pursuant to Title 42 U.S.C. Sections 1981 and 1983, barring deprivation under color of State statute, law, ordinance, regulation or usage of rights, privileges and immunities secured by the Equal Protection and Due Process clauses of the Fourteenth Amendment to the United States Constitution, and Title 42 U.S.C. Sections 2000e et seq. as amended, barring discrimination in employment on the basis of race, color or national origin. Plaintiffs also seek a

declaratory judgment pursuant to Title 28 U.S.C. Section 2201. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Jurisdiction is conferred on this Court by Title 28 U.S.C. Sections 1331 and 1333(3), and Title 42 U.S.C. Section 2000 e - 5(f).

CLASS ACTION

3. (a) The class consists of all those blacks and Hispanics* (hereinafter collectively referred to as "Minorities") who (i) have failed either an entry level or promotional examination given by the New Haven Civil Service Commission for a position in the New Haven Department of Fire Services (hereinafter referred to as the Department) for which eligibility lists are currently published or are to be published, or (ii) may become eligible to take such examinations to be given in the future, or (iii) have passed such an examination but, because of a low score, have not been appointed to the position applied for, or (iv) have been eliminated from contention for positions in the Department by reason of certain biased elements in the applicant screening procedures of the New Haven Civil Service Commission or the Department or (v) who would be eligible for appointment to positions within the Department but who are either unaware of the availability of such appointments or are unwilling to apply for such appointments because they believe the appointment procedures are discriminatory and unlawful in nature because the defendants have failed to establish a credible recruitment policy among minorities.

*As used herein, the term Hispanics means Spanish speaking or Spanish surnamed persons who were born or who are descended from persons who were born in Puerto Rico or other Caribbean, Central American or South American countries.

4. The requirements of Rule 23 F.R.C.P. are met in that the members of this class are so numerous as to make joinder impracticable; there are common questions of law and fact among the members of the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the other members of the class; and the defendants have acted and refused to act on grounds generally applicable to the members of the class, thereby making appropriate relief with respect to the class as a whole.

PARTIES

5. (a) The Firebird Society of New Haven, Inc. is a membership organization made up of black members of the Department. It includes all black members of the Department; the Department has no Hispanic members. It has worked over the years to recruit Minorities to the Department by locating qualified candidates for appointment from the New Haven Minority community and persuading them to take the appointment examination. It also works to advance the interests of Minorities in the Department by fighting against discrimination in promotions within the Department.

(b) Plaintiff GEORGE SWEENEY is black, the President of the Firebirds and a Firefighter in the Department. He and Plaintiff EARL CEYER, also black, a member of the Firebirds and a Firefighter in the Department, have taken and passed the Lieutenant's examination a combined total of three times but have not been promoted because their total eligibility score including efficiency rating placed them too low on the list for the number

of appointments made.

(c) Plaintiffs CHARLES GOODSON, TIM WATKINS, CLARENCE SMITH, CHARLES HOLNESS, MARTIN GOODSON, DONALD HOLNESS, JIMMY LA BOONE, ROBERT MILLER, THOMAS BULLOCK, CLYDE STEWART and FLOYD WILLIAMS are all black, members of the Firebirds and are black Firefighters in the Department.

(d) Plaintiff CHARLES WHITTABY is black and failed the Firefighters (hiring) examination, although he is and was fully qualified to be a Firefighter.

(e) Plaintiff RODNEY TAYLOR is black and applied to enter the Department but was rejected purportedly because he did not meet the minimum height requirement, although he is and was fully qualified to be a Firefighter.

(f) Plaintiff ELIZAH GAUSUS is black and applied to the Department but was rejected purportedly because he was too old, although he was then and is now fully qualified to be a Firefighter.

(g) Plaintiff CLIFTON McCLURE is prepared, ready, willing and able to apply for a job in the Department.

(h) Defendant MICHAEL DePALMA is the President and defendants HUGH KEENAN, IV, HUBERT C. FERNANDERS, JAMES DeANGELIS, and EDWARD PULCHALSKI are the members of the New Haven Board of Fire Commissioners, which is responsible for determining how many persons to promote and hire in the Department and for selecting from among the eligible applicants the persons to be promoted and hired.

(i) Defendant STANLEY ROGERS is the President and

Final Briefing

Defendants FRANK GRAZIOSO, VINCENT VILLANO, CLARENCE M. WHITNEY are members of the New Haven Civil Service Commission, which is responsible for designing and administering hiring and promotion examinations, establishing eligibility lists and certifying persons who are eligible for appointment to positions and promotions in the Department.

(j) Defendant FRANCIS J. SWEENEY is the Chief of the New Haven Department of Fire Services and as such participates in all decisions made with respect to hiring and promotions and, with the Defendant GUIDA and with other officers in the Fire Department determines efficiency ratings for members of the Department.

(k) Defendant BARTHOLOMEW GUIDA is the Mayor of the City of New Haven and as such selects the members of the Board of Fire Commissioners and Civil Service Commission. On information and belief he also participates in determining efficiency ratings for members of the Department.
Each defendant is sued individually and in his official capacity.

FIRST COUNT: FACTUAL BACKGROUND

6. New Haven is a city with a total population according to the 1970 census of 137,707 people. Of this total, 36,175 are blacks and it is estimated that an additional 4,916 are Hispanic. In percentage figures, the total minority population is approximately thirty percent.

7. Upon information and belief, the Department presently employs 502 men. Of this total, approximately 61 are lieutenants, approximately 34 are captains, 8 are Battalion Chiefs, 4 are deputy chiefs and 9 are other supervisory personnel.

8. Only 18 of the 502 men in the Department are black.

In percentage terms, minority group members constitute approximately 3.4 percent of the Department.

9. Of the 107 officers in the Department, only one is black, and he is a lieutenant, the lowest rank above private.

10. Prior to taking any promotional examination in the New Haven Fire Department, an applicant must complete a time-in-grade requirement of five years for lieutenant (the equivalent of sergeant in the Police Department) and two years for captain (the equivalent of a Police Lieutenant) and higher ranks.

Applicants must then take a written examination. A passing grade of 70% on the written exam is a requisite of eligibility for promotion. The written exam counts 55% of the total promotional score and an efficiency rating counts 45%. The efficiency rating is given by the Chief and is disclosed to each applicant (but not published generally) only after scores on the written exam are made known. A list is then compiled from which appointments are made according to the "rule of three," which requires each appointment to be made from among the top three on the list. The list is in effect for two years. However, appointments may be made without regard for the number of openings available. Appointees to positions which are not vacant are not assigned to their new position until there is a vacancy, which may not be until many years after their appointment. The number of persons promoted from each list is not determined in advance of preparation of the list and is governed by no ascertainable criteria.

11. Applicants for initial appointment to the Department must pass through the following stages in the selection process

(a) Completion of the standard Civil Service Application form.

(b) Preliminary screening to determine if the applicant meets certain mandatory departmental standards. These include:

Height:	5'7" minimum
Weight:	145 lbs. minimum
Education:	High School diploma
Residency:	New Haven or a contiguous town.
Age:	More than 21 and less than 29 years.
Character:	Arrest records are checked, and exclusions are made on the basis of them, but no fixed standard is used.

(c) Physical examination, for endurance and strength, which plaintiffs believe is graded on a pass/fail basis.

(d) Written examination: The applicant must achieve a grade of 70% on the written test to become eligible for appointment. The test is administered by the Civil Service Commission. It is a multiple-choice test which stresses reading comprehension, arithmetic, computation and vocabulary and is of the type which has been known to exert a discriminatory racial impact in the past. The form used in the most recent hiring examination was the Otis Employment test 2A, a copy of which is attached to this complaint as Exhibit E, a test which was first published in 1922.

(e) Selection: Applicants are then selected by the Board of Fire Commissioners at the recommendation of the Chief. If the appointment is from the regular Civil Service List, the selection process follows the "rule of three." However, appointments are usually made from a list called the "substitute list," which is exempted from Civil Service requirements by City Charter. The most recent group of appointments was made from this list. Appointments from this list do not have to follow the rule of three. Anyone designated "eligible" by the Civil Service Commission on

the basis of passing the written and physical exams and meeting minimum eligibility criteria of height, weight, age, residence, etc., may be selected, and the practice of the Board of Fire Commissioners is to pick and choose candidates from all parts of the list.

PROMOTION PROCEDURES

12. Defendants and their agents and employees are engaged in a policy and practice of discriminating against plaintiff members of Firebirds, and members of their class because of their race, color and/or national origin, in that defendants' standards and procedures for the promotion of firemen within the New Haven Department of Fire Services unlawfully favor white firemen and tend to exclude, limit and otherwise discourage plaintiffs' promotions. More specifically, the defendants deny plaintiffs and members of their class equal employment opportunities by a series of practices which include, but are not limited to, the following:

- (a) The use in conjunction with promotions of written examinations which exclude a disproportionately high percentage of minority applicants for promotion and upon information and belief --
 - (i) have never been subjected to an impartial professional validity study that would correlate the results on the tests with future performance;
 - (ii) are prepared, evaluated and graded by examination personnel who have had insufficient training to prepare written tests;

- (iii) are not predictive of performance in the position being tested for;
- (iv) contain questions which call for subjective judgment and the answers to which would vary depending on the racial, social, cultural, and national background of the examinee;
- (v) depend largely upon non-job-related verbal and mathematical skills;
- (vi) are obsolete;
- (vii) are not secure, and are available to the public at large.

(b) The Efficiency Rating: Defendants use an "efficiency rating" which is determined entirely subjectively and with only the vaguest standards for measuring "efficiency," does not aid in predicting performance in supervisory positions in the Department, has never been validated, and is determined by persons who have not had direct contact with the person being graded and cannot evaluate his performance. The efficiency rating is easily used as a device to discriminate against plaintiffs because it is only disclosed after the written examination scores are available;

(c) Time-in-grade requirements: The time-in-grade requirement for promotion tends to perpetuate past discrimination and keep minorities out of the officer ranks of the Department. This requirement has never been subjected to impartial professional validity studies or other adequate validation tests.

(d) Selection from the Eligible List: The practice of the Board of Fire Commissioners to determine the number of appointments to be made only after the eligibility list is

available permits them to manipulate the number of appointments to discriminate against plaintiffs and their class. This is accomplished in two ways:

1) The Board can appoint just few enough officers to avoid promoting a minority person. In the most recent promotions, 17 Captains were appointed, and the list stopped two men in front of the only black on the list. The number 17 was wholly unrelated to the needs of the Department.

2) The discriminatory effects of time-in-grade requirements are accentuated when more officers are appointed than vacancies exist. The most recent appointments of Captains, for example, precludes even the possibility of assignment of any members of plaintiffs' class to that job until approximately 1983.

The result of this discrimination is that only one minority person has ever been an officer in the Department, and he is at the lowest officer's rank. Only four blacks have ever been eligible to take a promotional exam at the time it was given.

APPOINTMENT PROCEDURES

13. Defendants are engaged in policies and practices which discriminate against plaintiffs who have been or will be applicants for initial appointments to the Department and members of their class on account of their race. More specifically, the defendants deny plaintiffs and members of their class equal employment opportunities by a series of practices which include, but are not limited to, the following:

(a) The use of written examinations as a requirement for appointment as a Firefighter in the Department which exclude

a disproportionately high percentage of minority applicants and, upon information and belief --

- (i) have never been subjected to an impartial professional validity study that would correlate the results of the tests with future performance as a fireman;
- (ii) are prepared, evaluated and graded by examination personnel who have had insufficient training to prepare, evaluate and grade written tests;
- (iii) are not predictive of performance in the position being tested for;
- (iv) require a knowledge of vocabulary, reading comprehension, politics, mathematics, and other matters which are not relevant to the work performed by firemen;
- (v) depend largely upon non-job related verbal and mathematical skills;
- (vi) are obsolete;
- (vii) are not secure, and are available to the public at large.

(b) The practice of hiring from the "substitute list" in order to evade the Civil Service requirement of "rule of three." Use of the "substitute list" enables the Board of Fire Commissioners carefully to regulate the number of minority persons joining the Fire Department. The Department has until recently followed a practice of having one black in each "class," or group of entrants. This pattern of systematic tokenism is demonstrated by

the list of dates on which blacks have entered the Department.

That list is:

1953	J. Curry
1957	G. Sweeney
1961	D. Wilson
1962	E. Geyer
1965	M. Robinson
1966	C. Goodson
1967	T. Watkins
1968	C. Smith
1969	C. Holness
1970	M. Goodson
1970	R. Carter
1970	D. Holness
1970	J. LaBoone
1970	R. Miller
1971	T. Bullock
1971	C. Stewart
1972	F. Williams
1972	R. Wilson

(In 1970 a reduction in hours in the work week led the Department to hire 100 men, accounting for the relatively large number of blacks hired.)

(c) Use of various minimum requirements, none of which have ever been subjected to any adequate validation study. These include:

- (i) The height and weight requirements, which operate to exclude qualified Hispanics (and blacks as well);
- (ii) the education requirement, which excludes many qualified minority persons who on the average have less formal education than whites;
- (iii) the age requirement, which operated to exclude minorities who were victimized by discrimination in the past;
- (iv) the use of arrest records, which tends to exclude qualified minorities, who statistically are arrested more frequently than whites. These requirements have been waived for whites but not minorities and have been invoked against minorities

when applicable. Plaintiff RODNEY TAYLOR meets the minimum height requirement but was falsely told that he did not and excluded from competition for appointment to the Department on account of his race. Plaintiff ELIJAH GAUSUS met the minimum age requirement at the time he took the hiring examination but was refused a job purportedly because he turned 29 before he was appointed.

(d) Following recruitment policies and practices which fail to assure, or even encourage, equal recruitment of minorities for employment in the Department.

PLAINTIFFS' EFFORTS TO SECURE RELIEF

14. Prior to instituting this action, plaintiffs have attempted conciliation to induce defendants to comply with the law: On May 18, 1972, plaintiffs sent letters to defendant DePALMA, defendant GUIDA, and defendant SWEENEY, expressing concern at the low number of minority persons in the Department. Nothing was done by the Department to increase the number of minority persons in the Department. Therefore, on June 15, 1973, plaintiffs filed a complaint with the Equal Employment Opportunity Commission. A copy of said complaint is attached to this complaint as Exhibit A.

15. The Department's response to the filing of that complaint was to "stack" the office of Captain by appointing seventeen Captains from the eligible list on the day before that list would expire by law. The Department further selected sixteen new Firefighter trainees only one of whom is black, from the "substitute list" then in existence, thus attempting to close off access to the Department.

16. Plaintiffs thereupon ascertained from the Department of Justice that the EEOC would be unable to investigate their complaint or effect reconciliation before the statutory 180 day period expired January 24, 1973 (see letter from Department of Justice attached to this complaint as Exhibit C).

17. The defendants thus adhere to the discriminatory practices described in paragraphs 14 and 15 above despite their knowledge that the Department of Fire Services employs a dramatically disproportionate number of minority group members as privates and officers in relation to their presence in the City's population.

18. The policies and practices described in Paragraphs 14 and 15 above constitute violations of plaintiffs' rights, privileges and immunities secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution; and 42 U.S.C. Sections 1981 and 1983.

19. The policies and practices described in Paragraphs 12 and 13 above also constitute violations of plaintiffs' rights, privileges and immunities under:

(a) Article I, Sections 1 and 20 of the 1965 Connecticut Constitution providing that all men are equal in rights, and no person shall be denied equal protection of the law nor be subjected to discrimination in the enjoyment of his civil rights because of his race.

(b) Sections 7-409 and 7-413 of the Connecticut General Statutes which provide that local Civil Service Commission are to select public employees upon the sole basis of proven ability to perform their employment more efficiently than others and, among other criteria, Civil Service tests shall relate to those matters which will fairly disclose the relative capacity of the persons tested to discharge the duties of the position to which they seek to be appointed.

SECOND COUNT:

20. Paragraphs 1 through 17 are hereby incorporated by reference the same as if fully set forth herein.

21. After filing a complaint with the EEOC, plaintiffs were informed by that agency that it had informed the Department of Justice that it would not complete its investigation or reconciliation of the parties within the statutory 180 day period. Plaintiffs were then informed by the Department of Justice that

it had issued a "right to sue" letter under Title 42 United States Code Section 2000e-5(e). See Exhibit C attached hereto.

22. Defendants' discriminatory practices violate the plaintiffs' right and the right of their class to equal employment opportunity guaranteed by Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Title 42 U.S.C. Section 2000e, et seq., as amended.

23. Unless this Court acts immediately, defendants' conduct will irreparably injure plaintiffs and their class by, inter alia:

(a) causing assignment of officers chosen in violation of plaintiffs' right to equal employment opportunity and foreclosing plaintiffs' opportunities to become officers in the foreseeable future.

(b) causing assignment of fire fighters chosen in violation of plaintiffs' constitutional right to equal employment opportunity and foreclosing the opportunities of plaintiffs and their class to work for the Department for the next year, as well as creating a racially more segregated Department for many years to come.

(c) selecting personnel on the basis of tests and other selection devices which discriminate against plaintiffs and their class for which plaintiffs have no adequate remedy at law.

A. RELIEF

24. Plaintiffs and the classes they represent have suffered and will continue to suffer, irreparable harm, injury and loss, for which they have no adequate remedy at law, unless defendants are restrained from continuing the practices, policies and procedures referred to in this complaint, and unless defendant

are required to take affirmative actions to dissipate the effects of their discriminatory and unlawful behavior. The right of the plaintiffs and the classes they represent are among the most fundamental in nature--the right to be fairly considered for a government job for which they are fully qualified rather than being discriminated against because of their race and cultural backgrounds. The interest of the public in bringing an end to discriminatory hiring practices in local government bodies and in having a Fire Department that draws its personnel from all segments of the community, will be significantly advanced by the Court's exercise of its equity powers.

B. EMERGENCY RELIEF

25. In order to prevent continuing discrimination against and further irreparable injury to plaintiffs and members of their class within the next ten days and thereafter, plaintiffs respectfully request this Court to enter a Temporary Restraining Order and a Preliminary Injunction restraining defendants and their successors in office, agents, employees and their successors in office from:

(a) assigning anyone not in plaintiffs' class to positions to which they were appointed on or after the date defendants or any of them were formally notified of the pendency of plaintiffs' complaint with the EEOC.

(b) administering any written exams in conjunction with promotions within the Department.

(c) hiring or promoting anyone not in plaintiffs' class from the eligibility lists for positions within the Department.

(d) taking any action which would have the effect of denying, abridging, withholding, conditioning, limiting, or otherwise interfering with the rights of plaintiffs and members of their class to equal employment opportunities pending the outcome of this litigation.

C. PERMANENT RELIEF

26. For permanent relief, plaintiffs respectfully pray that this Court:

1) Enter its permanent injunction

(a) Granting the relief prayed for in Paragraph 25 of Section B above.

(b) Restraining and enjoining the Department and Civil Service Commissioners and their successors from administering or otherwise making use of any test as a criterion for appointment to or promotion within the Department which has not been prepared and validated in accordance with sound standards of professional psychological testing as accurately measuring the merit and fitness of candidates to perform the tasks of the position for which the test is being administered.

(c) Requiring the Civil Service Commission to promulgate Spanish language versions of all future entrance and promotional exams together with appropriate qualifying, non-competitive exams to test for minimum English proficiency.

(d) Awarding plaintiffs and their class back pay.

(e) Eliminating all time-in-grade requirements for the plaintiffs and their class in the Department.

(f) Eliminating the currently existing height and weight requirements for employment by the Department and the exclusion of those with arrest records.

2) Retain jurisdiction of this action and order defendants to submit for the Court's approval:

(a) A revised system for promotions under which qualified applicants are to be selected only from the class of plaintiffs, as openings arise, until they are represented as officers in the Department in proportion to their number among residents of the City of New Haven; or

(b) A revised system for promotions under which qualified applicants are to be promoted alternately, one white and one minority from the class of plaintiffs, as openings arise, until they are represented as officers in the New Haven Fire Department in proportion to their number among residents of the City of New Haven; and

(c) A revised system of hiring under which qualified applicants will only be hired from the class of plaintiffs, as openings arise, until they are represented in the Department in proportion to their number among residents of New Haven; or

(d) A complete plan for promotions, recruitment and hiring which includes as part of any proportional hiring plan that such plan shall apply to all hiring done after filing of plaintiffs' complaint with the EEOC.

(e) Granting of seniority to plaintiffs and members of their class back to the date that they first applied for a position in the New Haven Fire Department regardless of whether or not they passed the hiring selection criteria which have been determined to have been discriminatory.

3) Award plaintiffs and their class actual damages of ONE MILLION (\$1,000,000.00) DOLLARS.

- 4) Award plaintiffs and their class punitive damages of ONE MILLION (\$1,000,000.00) DOLLARS.
- 5) Grant such additional relief as may appear to the Court to be equitable and just.
- 6) Allow plaintiffs their costs herein, including reasonable attorneys' fees.

Dated: October 3, 1973.

THE PLAINTIFFS,

By

MICHAEL P. KOSKOFF
1241 Main Street
Bridgeport, Connecticut
203 336-4406

DAVID N. ROSEN
EDWARD J. DOLAN
265 Church Street
New Haven, Connecticut
203 787-1920

Their Attorneys

UNSEALED ORDER OF DECEMBER 5, 1973

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL.

v.

CIVIL NO. 15876

MEMBERS OF THE BOARD OF
FIRE COMMISSIONERS, ET AL.

ORDER

Counsel for the parties to this suit state that the order hereinafter set forth is not agreed to but is acquiesced in by all the parties to the suit. It is further stipulated that the order is final and binding and that none of the parties shall appeal from it. Any state statutes, municipal ordinances and regulations of the city commissions in conflict with the terms of this order are null and void to the extent necessary for compliance with the terms of this order.

NOW BE IT ORDERED AND ADJUDGED AS FOLLOWS:

A. Definitions

1. "Minorities" as used in this order means blacks and Hispanics as set forth in the Complaint, paragraph 3(a).
2. "The Parties" as used in this order means the plaintiffs, the defendants, and the intervenors to this action.
3. "Test" is used in this order as defined in 29 C.F.R. § 1607.2 (1973).

*Code of Federal Regulations
has to be validable by
an outside agency*

B. Recruitment

4. The defendants will undertake and bear the cost of an affirmative action program to increase the number of minorities in the Department of Fire Services. In preparation of any new lists for appointments to the Department, plaintiffs and defendants will undertake a joint recruiting plan. The details of this plan will be worked out jointly by the plaintiffs and defendants, and be subject to the approval of the Court. The plan will include, among others, the following features:

5. The parties will undertake to disseminate to the largest possible number of prospective minority applicants for the Department, the defendants' goals of increasing minority representation at all levels in the Department. This will include the terms of this order as set forth below, including increased opportunity for hiring of minorities, and increased opportunities for promotion of minorities within the Department.

6. The defendants will actively cooperate with the plaintiffs in establishing a recruitment program so long as recruitment activities do not interfere with the Fire Department's primary duties of extinguishing and preventing fires. Said program will include appointing a special recruiting officer from among the plaintiffs as an acting lieutenant, with lieutenant's pay and responsibilities. The special recruiting officer will report directly to the Chief or the 30A

Assistant Chief designated by the Chief. This special Fire Department recruiting officer shall, subject to the authority of the designated Assistant Chief, be in charge of recruiting efforts in the minority community and will have authority subject to the approval of said Assistant Chief to assign men to specific recruiting activities during the recruiting period. The Department will also assign plaintiffs when available to give speeches, conduct interviews and perform other functions.

7. Recruitmobile. The Department will have a recruitmobile which will be staffed with available minority members of the department. The recruitmobile will go to minority neighborhoods to publicize examinations, answer any questions would-be applicants might have and distribute examination notices to all interested individuals.

8. Neighborhood Offices. The Department will establish information centers in predominantly minority neighborhoods during the recruiting period. These centers will be staffed by minority members and other members of the Department, who will be responsible for answering questions and distributing notices and applications.

9. Newspaper and Radio Advertising. The Department will run a vigorous advertising campaign in newspapers. With respect to radio stations and television shows, the Department will make use of public information time granted by those media.

C. Hiring of New Firefighters

10. Tests. The Department will move as soon as possible to develop an entrance test which will meet the requirements of 42 U.S.C. § 2000(e), et seq. Until the goal set forth in paragraph 12 below has been met, the Department shall submit each entrance test to counsel for the plaintiffs at least four weeks before administering the test. The contents of the test will be kept secret and confidential by all parties concerned. The Commission will keep all records required under federal laws and regulations and will promptly provide counsel for the plaintiffs with copies of said records as they are compiled.

11. Hiring. In order to achieve rapid substantial minority representation in the Department, while not displacing any men already hired, the Department shall hire at least 16 of the next 24 firefighters from among qualified minority group applicants.

12. Thereafter, the Department shall hire at least one minority applicant for every non-minority applicant until the total number of minority privates in the Department is 75. New substitute firemen lists may have to be compiled from time to time in order to meet the guidelines of this paragraph.

13. Thereafter, appointment shall be made in compliance with the provisions of 42 U.S.C. § 2000(e), et seq.

14. Not later than April 1, 1974, defendants will compile and submit to the Court a proposed new lieutenants' eligibility list. The Court shall review the tests, the results of said tests, and the eligibility list for evidence of good faith.

15. In view of seven existing vacancies at the rank of Captain within the Department, plaintiffs agree to the immediate lifting of the Temporary Restraining Order of October 5, 1973, as subsequently extended by the Court, with respect to seven men appointed but not yet assigned to the rank of Captain. These men are Francis McDonough, Joseph Capette, Leonard Guerrera, William Ryan, Kenneth Quinn, Robert Gilhuly, and George Erhler. With respect to the 11 men appointed for whom assignments are not yet available, as vacancies arise, any party may apply to the Court for a modification of this order pursuant to paragraph 23 hereof. The parties also agree to the lifting of the restraining order with respect to the probationary firemen sworn into office on September 24, 1973 and the two acting probationary firemen joining the Department after the institution of this suit.

16. On April 1, 1974, providing that the defendants have shown good faith in complying with provisions of this order up to that time, then the Temporary Restraining Order as to the men appointed but not yet assigned to the rank of Captain will be lifted and assignment of these men may occur as vacancies arise in the rank of Captain.

17. Defendants will make a good faith effort to increase minority representation in the rank of Captain. Defendants will schedule a new examination for the rank of Captain only after a reasonable number of minority lieutenants have become eligible for promotion to the rank of Captain, and in any event, no earlier than May 1, 1975.

18. All promotional tests given after February 15, 1974 shall meet the requirements of 42 U.S.C. § 2000(e), et seq. The Commission will keep all records required under federal laws and regulations and will promptly provide counsel for the plaintiffs with copies of said records as they are compiled.

(19) check

E. Time in Grade

19. Lieutenants. Effective immediately, any private may take the lieutenant's examination 30 months after his appointment to the Department and if qualified, may be permanently assigned to lieutenant's duties 36 months after his initial appointment to the Department.

20. Other Officers. Any officer of the Department may take the examination for the next higher rank after 12 months at the rank below the one for which the examination is given.

F. Damages

21. If, on October 1, 1975, defendants have complied with the terms of this order, plaintiffs will waive their claim for actual or exemplary damages, including back pay.

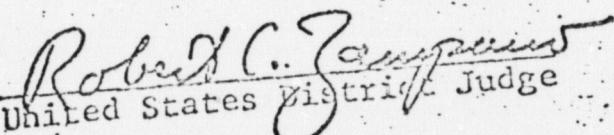
G. Costs

22. The parties reserve the right to make for an award of costs, including reasonable attorneys' fees pursuant to 42 U.S.C. § 2000e5(k). The parties reserve the right to oppose this request. The parties agree that any dispute over an award of reasonable attorneys' fees will not impinge on the spirit or effectiveness of this order, nor on their compliance with it.

H. Continuing Jurisdiction of the Court

23. The Court will retain continuing jurisdiction over this suit pending a showing or compliance with all of the terms of this order. Upon a showing of good cause, and upon due notice to all parties, or upon agreement of the parties, any provision of this order may be amended or modified by an order of this Court or any court of competent jurisdiction.

Dated at New Haven, Connecticut, this 5th day of December, 1973.


Robert C. Tamm, Jr.
United States District Judge

SEALED ORDER OF DECEMBER 5, 1973

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL.

v.

CIVIL NO. 15876

MEMBERS OF THE BOARD OF
FIRE COMMISSIONERS, ET AL.

IN CAMERA AGREEMENT

This agreement sets forth for the benefit of the Court and counsel, certain details regarding implementation of the Court's Order of December 5, 1973. This agreement shall be made part of the record, but it shall be sealed. Counsel for the parties agree that the existence of this agreement, including the contents thereof, shall not be made public through publication or otherwise. References are to paragraphs in the Court's Order of December 5, 1973.

D. Promotions

14. The parties and the Court shall review the lieutenants' list before the list is submitted to the Board of Fire Commissioners but after the test is taken to determine whether there are seven (7) minority members who will be appointed within a two year period, and whether two of same will be immediately assigned. If not, plaintiffs may activate the suit.

17. The parties and the Court will review the Captains' list before the list is submitted to the Fire Commissioners, but after the test is taken to determine whether there is one minority member immediately assignable thereon. If not, the plaintiffs may activate the suit. "A reasonable number of minority lieutenants" is four.

21. "Terms of this order" includes this in camera agreement.

Dated at New Haven, Connecticut, this 5th day of December, 1973.

Robert V.邦纳
United States District Judge

ORDER OF AUGUST 30, 1974

FILED

U.S. DISTRICT COURT

NEW HAVEN, CONNECTICUT

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL.

VS.

CIVIL NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL.

O R D E R

The plaintiffs herein having filed this class action, in which action the plaintiffs have claimed relief from alleged discrimination on the basis of race and national origin by the defendants in the hiring and promotion practices within the New Haven Department of Fire Services, and the defendants having denied that there was any discrimination in any hiring or promotional practices, and certain interested members of the New Haven Department of Fire Services having participated as intervenors in this action and being hereby permitted to intervene; and

All parties having agreed and admitted that this court has jurisdiction over this action and that the court has the power to fashion a remedy; and

Counsel for the parties to this suit state that the order hereinafter set forth is not agreed to but is acquiesced in by all of the parties to the suit in order to end this litigation.

NOW THEREFORE, it is

1. ORDERED, that this Court's temporary restraining Order

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of October 5, 1973, as extended and modified by later orders of the Court is hereby terminated; and it is further

2. ORDERED, that this Court's Order of December 5, 1973, is hereby terminated; and it is further

3. ORDERED, that any State statutes, municipal ordinances and regulations of the City Commissions in conflict with the terms of this Order are null and void to the extent necessary for compliance with the terms of this Order; and it is further

4. ORDERED:

(a) That the term "Minorities" as used in this Order means blacks and hispanics as set forth in the Complaint, Paragraph 3(a);

(b) That "The Parties" as used in this Order means the plaintiffs, the defendants and the intervenors to this action;

(c) That "Test" is used in this Order as defined in 29CFR Section 1677.2 (1973); and it is further

5. ORDERED: That the City of New Haven will follow the following procedure with respect to the hiring of new fire-fighters:

(a) Tests. The City of New Haven will move as soon as possible to develop an entrance test which will meet the requirements of 42 U.S.C. Sec. 2000(e), et seq. Until the goals set forth in Paragraph 5(b) and 5(c) below have been met, the City shall submit the results of each entrance test to counsel for the plaintiffs at least ten days before public release of the eligibility list. These results will be kept secret and

confidential by all parties concerned. The Commission will keep all future records required under federal laws and regulations; and on request will furnish relevant records to plaintiff's counsel at least ten days before public release.

(b) Hiring. In order to achieve rapid substantial minority representation in the Department, while not displacing any men already hired, at least 16 of the next 24 firefighters assigned shall be from among qualified minority group applicants.

(c) Thereafter, the Department shall hire at least one minority applicant for every non-minority applicant until the total number of minority privates in the Department is 75. New substitute firemen lists may have to be compiled from time to time in order to meet the guidelines of this paragraph. In compiling new substitute firemen lists, the Department shall take whatever reasonable steps are necessary to insure that adequate numbers of minorities are available and qualified for appointment, including but not limited to the procedures set out in that portion of the Court's Order of December 5, 1973, dealing with recruitment.

(d) Thereafter, appointments shall be made in compliance with the provisions of 42 U.S.C. Sec. 2000(e), et seq., and it is further

6. ORDERED, with respect to promotions:

(a) The eligibility list to be used by the Department of Fire Service for promotion to the rank of Lieutenant shall be as set forth in Exhibit "A" attached hereto.

(b) All promotions to the rank of Lieutenant shall be made in the order set forth in the eligibility list attached hereto as Exhibit "A" and this list shall expire on or before August 20, 1976, but prior to the expiration of this list at least 28 appointments shall be made therefrom.

(c) No examination for promotion to the rank of Captain shall be given if any of the first 22 persons appointed to the rank of Lieutenant from the above list is ineligible to take such examination on account of insufficient time in grade at the rank of Lieutenant.

(d) All promotional tests given hereafter shall meet the requirements of 42 U.S.C. Sec. 2000(e), et seq. The Commission will keep all records required under federal laws and regulations, and, until the goals set forth in Paragraph 5(c) are met, on request the Commission will furnish to plaintiffs' counsel at least ten days before public release all relevant records, including a copy of the test, eligibility lists, test results, and model answers.

(e) This litigation shall not be deemed res judicata with respect to future examinations for or promotions to the rank of Captain, and all the parties shall be as free to make such claims as they deem appropriate with respect to such examinations and promotions as if this action had not been brought, and it is further

7. ORDERED, with respect to Time in Grade:

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(a) Lieutenants. Effective immediately, any private may take the lieutenant's examination 30 months after his appointment to the Department and if qualified, may be permanently assigned to lieutenant's duties 36 months after his initial appointment to the Department.

(b) Other Officers. Any officer of the Department may take the examination for the next higher rank after 12 months at the rank below the one for which the examination is given, and it is further

8. ORDERED, that the parties reserve the right to move for an award of costs, including reasonable attorneys' fees pursuant to 42 U.S.C. Sec. 2000(e) (5) (k). The parties reserve the right to oppose this request. The parties agree that any dispute over an award of reasonable attorneys' fees will not impinge on the spirit or effectiveness of this order, nor on their compliance with it. Any party shall have the right to appeal from the Court's Order with respect to costs and attorneys' fees.

Dated at New Haven, Connecticut, this 30th day of August, 1974.

Robert C. Zampano
Robert C. Zampano
United States District Judge

EXHIBIT "A"

Martin O'Connor
George Boucher
William Muggleton
Earl Geyer
Boris Starzyk
Robert Foley
Donald Wilson
Robert Baker
Peter Fertig
Charles Goodson
Donald Hennessey
Walter Furgalack
George Sweeney
Paul Looney
Joseph Quirk
Robert Miller
Edward FitzGerald
Robert Callahan
Charles Holness
Thomas Urban
Anthony Gambardella
Tim Watkins
William Gambardella
George Horn

43A

Timothy King

Robert LeCroix

Frank Martin

George Price

Donald Acosta

Raymond Cassista

Knud Søndergaard

Raymond Luyckx

John Cleary

Richard Williams

John Sullivan

Leonard Borelli

James Coady

Edward Houde

John Mulligan

James Brandt

Kevin Donovan

John Doyle

Michael Giuchta

James Daniel

Raymond Sullivan

Paul Tescione

Eugene Calzetta

Kenneth Goodale

Fred Geier

44A

Nicholas Candido

Thomas Knudsen

John Bohan

Joseph Lockwood

Marcus Sullivan

Martin Goodson

Gerald Enright

Robert Whelan

John Blasiak

Marion Robinson

Marine Glass

John Malone

Martin King

Peter Serletti

Leigh Jackson

Peter Martin

David McDonald

Noel Lambert

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MOTION TO INTERVENE AS DEFENDANTS
AND CROSS CLAIMANTS

FIREBIRD

C.P.L. 11-29-1974
U.S. DISTRICT COURT
NEW HAVEN, CONNECTICUT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

VS.

: CIVIL NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL : September 19, 1974

MOTION TO INTERVENE AS DEFENDANTS
AND CROSS CLAIMANTS

Firefighter's Committee to Preserve Civil Service, Inc., (FCPCS) a non-profit corporation incorporated under the laws of the State of Connecticut and the individuals named in Exhibit A on behalf of themselves and of all persons in the New Haven Fire Department similarly situated, all being non-minority fire fighters within the New Haven department of fire services in ranks from private to battalion chief move for leave to intervene as defendants and cross claimants in this action, in order (1) to assert their proposed motion to reopen the judgment of this court based on an Order dated August 30, 1974; (2) to appeal said Order, if necessary; (3) to participate in this litigation by raising defenses and cross claims in accordance with the proposed answer and proposed cross claim attached hereto on the grounds that:

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1. This action was begun on October 3, 1974, by the named plaintiffs against the named defendants and proceeded to the Order of August 30, 1974, without ever having been heard on the merits.

2. The interveners should have been formally advised of the suit, either individually or as members of a class potentially adversely affected by the litigation.

3. At significant times during the litigation, particularly in the pre-trial conferences preceding the December 1973 preliminary injunction and the August 30, 1974 Order and Judgment, the proceedings were held in closed session and subject to orders sealing the record of the proceeding.

4. The interveners are directly affected by the Order of August 30, 1974, which on information and belief permits and orders promotions to be made on a basis of race and not merit in violation of the interveners' (a) constitutional rights to Due Process and Equal Protection of the law; (b) statutory rights preserved to them under Title 42 U.S.C. Sections 1981 and 1983, barring deprivation under color of state statute, law, ordinance, regulation or usage of rights, privileges and immunities secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, and Title 42 U.S.C. Sections 2000e et. sec. as amended barring discrimination in employment on the basis of race, color or national origin; (c) rights guaranteed in the Charter of the City of New Haven and the laws of the State of Connecticut; and (d) rights bargained for the collective bargaining agreement existing between the City of

New Haven and Local 825 of the International Association of Fire-fighter's, AFL-CIO.

5. The applicants have an interest in the transaction which is the subject of the answer and they are so situated that the disposition of this action as a practical matter impedes and impairs their ability to protect that interest and that interest is not adequately represented by existing parties. Applicants are, therefore, entitled to intervene as of right under Rule 24(a) (2) of Federal Rules of Civil Procedure. Assuming arguendo they were not entitled to intervene as of right they should be entitled to intervene as a matter of discretion pursuant to Rule 24(b), Federal Rules of Civil Procedure.

6. On the information and belief the following matters have incurred during the course of this litigation which were until recently unknown to the intervenors:

(a) The originally named defendants were willing to negotiate in manner depriving the intervening applicants of constitutional statutory, and contractual rights in order to avoid a damage claim by the plaintiffs.

(b) On or about December 5, 1973, the parties to the litigation agreed in violation of the constitution, statute, and contracts previously cited to a pre-established result for promotional exams subsequently to be held.

(c) The Order of August 30, 1974, implements that prior undisclosed, sealed understanding.

(d) The applicants never have been adequately represented, have never had an opportunity to present to the court factors mitigating against an order such as the order of August 30, 1974, and have been deprived of their rights without due process of law.

WHEREFORE, the interveners pray that the Motion to Intervene be in all things granted.

J. DANIEL SAGARIN
Attorney for Intervenors
855 Main Street
Bridgeport, Connecticut

CERTIFICATE

This is to certify that a copy of the foregoing Motion has been forwarded, postage prepaid, to MICHAEL P. KOSKOFF, 1241 Main Street, Bridgeport, Connecticut, DAVID N. ROSEN, 265 Church Street, New Haven, Connecticut, THOMAS F. KEYES, JR., 205 Church Street, New Haven, Connecticut, and W. PAUL FLYNN, 132 Temple, New Haven, Connecticut.

J. DANIEL SAGARIN

(d) The applicants never have been adequately represented, have never had an opportunity to present to the court factors mitigating against an order such as the order of August 30, 1974, and have been deprived of their rights without due process of law.

WHEREFORE, the interveners pray that the Motion to Intervene be in all things granted.

J. DANIEL SAGARIN
Attorney for Intervenors
855 Main Street
Bridgeport, Connecticut

CERTIFICATE

This is to certify that a copy of the foregoing Motion has been forwarded, postage prepaid, to MICHAEL P. KOSKOFF, 1241 Main Street, Bridgeport, Connecticut, DAVID N. ROSEN, 265 Church Street, New Haven, Connecticut, THOMAS F. KEYES, JR., 205 Church Street, New Haven, Connecticut, and W. PAUL FLYNN, 132 Temple, New Haven, Connecticut.

J. DANIEL SAGARIN

PROPOSED ANSWER AND CROSS-CLAIM OF
INTERVENORS FIREFIGHTER'S COMMITTEE
FOR THE PRESERVATION OF CIVIL SERVICE,
ET AL

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL.

VS.

CIVIL ACTION NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL

: September 19, 1974

PROPOSED ANSWER AND CROSS-CLAIM OF
INTERVENORS FIREFIGHTER'S COMMITTEE
FOR THE PRESERVATION OF CIVIL SERVICE,
ET AL

1. Paragraph one of the complaint is admitted to the extent it purports to claim this to be an action for declaratory and injunctive relief, but all substantive allegations are denied.
2. Paragraph two is admitted.
3. As to paragraph 5, the intervenors are without sufficient information and belief with which to form an opinion and therefore leave plaintiffs to the proof of paragraphs 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k.
4. Paragraph 6 is denied.
5. Paragraph 7 is denied.
6. Paragraph 8 is denied.
7. Paragraph 9 is admitted except for the last sentence.
8. Except for the last sentence, paragraph 10 is admitted.

The last sentence is denied.

9. Paragraph 12 is denied.
10. Paragraph 13 is denied.
11. As to paragraphs 14, 15, 16, 17, 18, and 19, the intervenors are without sufficient information and belief with which to form an opinion.
12. As to paragraph 20 intervenors incorporate by reference the same responses as if fully set forth herein.
13. Paragraph 21 is admitted.
14. Paragraph 22 is denied.
15. Paragraph 23 is denied.
16. Paragraph 24 is denied.
17. Paragraph 25 is denied.

FIRST AFFIRMATIVE DEFENSE

The Equal Employment Opportunity Act 42 U.S.C. § 2000e et seq. proscribes discriminatory preference for any group, minority or majority.

SECOND AFFIRMATIVE DEFENSE

The individuals plaintiffs are members of International Association of Firefighters, AFL-CIO, which is a party to a labor agreement with the City of New Haven. The suit seeks to abrogate some of the terms of that agreement, accordingly, Local 825 of the International Association of Firefighters, AFL-CIO, should be named a defendant party.

THIRD AFFIRMATIVE DEFENSE

Any remedy pursuant to which hirings or promotions are based in whole or in part on the racial, religious or ethnic origin of the applicant for promotions is unlawful and unconstitutional.

CROSS COMPLAINT

1. Cross complainants, intervenors in this action, bring this action for declaratory and injunctive relief on their own behalf and on behalf of all others similarly situated to redress any injury done to them or any injury which might be done to them by the defendants in connection with an enforced or consentual modification of the existing practices for hiring and more especially for promotion within the New Haven Department of Fire Services.

2. This Cross Complaint is brought pursuant to 42 U.S.C. Sections 1981 and 1983 barring deprivation under color of State Statute, law ordinance, regulations or usage of rights, privileges and immunities secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, and Title 42 U.S.C. Sections 2000e et seq. as amended barring discrimination in employment on the basis of race, color, or national origin. Cross claimants also seek a declaratory judgment pursuant to Title 28 U.S.C. Section 2201. The matter in controversy exclusive of interests and costs exceeds the sum of TEN THOUSAND (\$10,000.00) DOLLARS. Jurisdiction is conferred on this court by Title 28, U.S.C. Section 1331 and 1343 (3) and Title 42, U.S.C. Section 2000e-5(f).

3. The class consists of all those non minorities (minority being used in the sense as it is used in paragraph 3 of the

complaint in this action) who may be affected by any relief consented to or ordered establishing any quota based on race, religion, or national origin.

4. (a) The Fireman's Committee for the Preservation of Civil Service, Inc. is a non-profit corporation incorporated under laws of the State of Connecticut. Its charter purpose is, among other things, to preserve a system of promotion within municipal fire departments based solely on merit and unrelated to the race, religion, or national origin of the applicant for promotion.

(b) Individual cross claimants are listed and described in Exhibit "A" which is attached hereto and are all individuals currently serving on the New Haven Fire Department in ranks ranging from private to battalion chief.

(c) The defendants are described in paragraphs 5h through 5k of the complaint.

5. Beginning on October 3, 1973, and continuing to the present, the defendants have embarked upon a course of conduct detrimental and discriminatory to cross claimants in that the defendants have abandoned a system of merit hiring and promotion in the Fire Department in the City of New Haven and have embarked upon a system of hiring and promotion based on race and national origin.

6. Pursuant to said course of conduct, defendants among other things:

(a) Participated in an agreement designed to achieve preordained results on a competitive examination for lieutenants.

(b) Failed to carry out their constitutional, statutory and contractual obligations to cross claimants in order to avoid potential liability and money damages sought by plaintiffs.

(c) Participated and approved an agreement pursuant to which individuals were made eligible for promotion to the rank of lieutenant not on the basis of merit, but rather on the basis of race or ethnic origin.

7. The rights of the cross claimants and the classes they represent are among the most fundamental in nature - the right to be fairly considered for government jobs for which they are fully qualified rather than being discriminated against because of their race and ethnic background. The interest of the public in insuring a promotional system based solely on merit will be significantly advanced by the court's exercise of its equity powers.

WHEREFORE, intervenors and the classes they represent have suffered and will continue to suffer irreparable harm, injury and loss for which they have no adequate remedy at law and pray for:

(1) a temporary and permanent injunction enjoining and restraining defendants from continuing the practices, policies and procedures referred to in this Cross Complaint;

(2) the temporary injunction restraining defendants from making appointments pursuant to the list attached to the Order of this court of August 30, 1974;

(3) a preliminary and permanent injunction restraining the defendants, their agents, successors and assignees from

carrying or entering into any agreement or system of promotion in any way based on the promotional applicants race, religion or national origin;

- (4) Damages of \$100,000.00;
- (5) Such additional relief, as may appear to this court to be equitable and just;
- (6) Allow plaintiffs their costs herein, including reasonable attorney's fees.

DATED: September 18, 1974.

THE CROSS CLAIMANTS INTERVENORS

BY

J. DANIEL SAGARIN
Their Attorney
855 Main Street
Bridgeport, Connecticut

EXHIBIT A

All of the following are residents of the State of Connecticut and are currently employed by the Department of Fire Services of the City of New Haven, holding the ranks that appear next to their names:

<u>NAME</u>	<u>RANK</u>
Donald Acerra	Private currently on lieutenants list
Raymond Cassista	Private currently on lieutenants list
John Cleary	Private currently on lieutenants list
Raymond Laycks	Private currently on lieutenants list
Knut Sondergaard	Private currently on lieutenants list
Martin O'Conner	Private currently on lieutenants list
George Boucher	Private currently on lieutenants list
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Nicholas Poulmas	Private currently on lieutenants list
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John Reardon	Battalion Chief and Co-Chairman of FCPCS
Albert Seoletti	Battalion Chief and Co-Chairman of FCPCS
Fred Geier, Jr.	A firefighter not on list.
Charles Doll	Captain
William Mooney	Captain
William McKay	Captain

INTERVENORS (FCPCS, ET AL.) MOTION TO
REOPEN ORDER

SEP 26 11 28 AM '74

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

VS.

: CIVIL ACTION NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL

: September 19, 1974

INTERVENERS (FPCPS, et al) MOTION TO
REOPEN ORDER

The interveners (FPCPS, et al) in this action move to reopen the Order of this court of August 30, 1974, on the grounds that:

1. The interveners and those they purport to represent have a right to intervene in this action.
2. The judgment entered in this matter affects rights protected to the interveners and those they purport to represent by the Constitution of the United States, Title 42 U.S.C. Sections 1981 and 1983, Title 42 U.S.C. Sections 2000e ~~et seq.~~ as amended, as well as by the Charter of the City of New Haven, State of Connecticut and the collective bargaining agreement between the City of New Haven and Local 825 of the International Association of Firefighters, AFL-CIO.
3. The prosecution of this litigation has been conducted in a manner designed to prevent interveners from access to inform-

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ation concerning the proceedings. On information and belief, this litigation has proceeded primarily by means of chamber conferences which were often unrecorded, and, in some instances, sealed.

4. On information and belief persons listed on the order of this court of August 30, 1974, have been placed on said list, not by reason of merit, but solely by reason of racial background or ethnic origin.

5. The affect of said order is to deprive the interveners of the ability to compete honestly and fairly for promotions within the New Haven Department of Fire Services.

6. The Court of Appeals for the Second Circuit has stated in a remarkably similar case Bridgeport Guardians v. Members of the Bridgeport Civil Service Commission 482 F. 2d 1333, 1341 (2 Cir. 1973), "the imposition of a quota will obviously discriminate against those Whites who have embarked upon a (fire) career with the expectation of advancement only now to be denied because of their color alone. The impact of the quota upon these men can be harsh and can only exacerbate rather than diminish racial attitudes. (citing authority) (Fire) moral is again a proper concern of the ^{court} welfare if the whole community is to be considered. We see no purpose incurring a past mischief by imposing a new one which is deliberately tainted". The court, thereupon struck from the lower court's ruling quota relief similar to the instant order of August 30, 1974, all quota relief for the supervisory ranks.

Accordingly, we believe that the order of August 30, 1974, entered in chambers based on sealed and secret agreements reached

in December of 1973, without the applying intervenors having been afforded an opportunity to be heard is contrary to the law of this circuit and is in violation of the rights of the applying intervenors.

We ask the Order be reopened and intervenors be given an opportunity to be heard.

Respectfully submitted,

J. DANIEL SAGARIE
Attorney for Intervenors
855 Main Street
Bridgeport, Connecticut

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been forwarded, postage prepaid, to MICHAEL P. KOSKOFF, 1241 Main Street, Bridgeport, Connecticut, DAVID N. ROSEN, 265 Church Street, New Haven, Connecticut, and THOMAS F. KEYES, JR., 205 Church Street, New Haven, Connecticut, and W. PAUL FLYNN, 132 Temple, New Haven, Connecticut.

J. DANIEL SAGARIE

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL.

VS.

: CIVIL ACTION NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL

: September 19, 1974

MOTION TO EXTEND TIME TO FILE
APPEAL FROM ORDER OF AUGUST 30, 1974

The applying intervenors (FCPCS et al) move this court for an order extending the time within which to appeal this court's order of August 30, 1974 for two (2) weeks following this court's decision on:

1. Intervenors' Application to Intervene.
2. Intervenors' Motion to Reopen.
3. Intervenors Motion to Stay Execution.

Unless said motion is granted, intervenors may be deprived of the opportunity to appeal the order affecting their rights.

Respectfully submitted,

J. DANIEL SAGARIN
Attorney for Intervenors
855 Main Street
Bridgeport, Connecticut

ORDER

This is to order that the above entitled action be
GRANTED/DENIED.

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ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

VS.

CIVIL ACTION NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL

: September 19, 1974

ORDER TO SHOW CAUSE

Upon the annexed motions and affidavit of ALBERT SERLETTI,
it is

ORDERED that the parties show cause at a hearing of this court to be held at the United States Court House, 141 Church Street, on the 30th day of September, 1974 at 10:30 p.m. in the afternoon of that day or as soon thereafter as counsel can be heard why an order should not be made herein:

1. Granting the applying intervenors motion to intervene.
2. Granting the intervenors motion to re-open the order.
3. Granting the intervenors motion to extend time to file an appeal from the order.

IT IS FURTHER ORDERED, that service of a copy of this order and of papers upon which the same is granted on the said parties on or before September 24, 1974, shall be sufficient service of this order and in the mean time and until the hearing and determination of this motion and the entry of an order thereon that all

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proceedings be stayed and, in particular, any action taken pursuant to the order of this August 30, 1974.

DATED this 20th day of September, 1974 at New Haven.

S/ROBERT C. ZAMPANO
ROBERT C. ZAMPANO
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

VS.

CIVIL ACTION NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL

: September 19, 1974

AFFIDAVIT OF ALBERT SERLETTI

I, ALBERT SERLETTI, being duly sworn hereby dispose and say:

1. I am over the age of twenty-one (21) and believe in the obligation of oath.
2. I am a Battalion Chief in the Department of Fire Services for the City of New Haven.
3. I am Co-Chairman of the Firefighters Committee to Preserve Civil Service which I understand is being incorporated as a non-stock corporation in the State of Connecticut.
4. A charter purpose of the organization is to insure that hiring and promotions and municipal fire departments and, in particular, in New Haven, are ^{Not} ~~not~~ based on ^{race} religion or ethnic origin.
5. The organization has the support of the vast majority of non-minority firefighters in the City of New Haven of all ranks.
6. Based on conversations with ~~federal~~ members of the depart-

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ment, I can state that they, as well as I, were unaware of the nature of the proceedings which were occurring until after the release of the order of this court of August 30, 1974.

7. We were aware that a job validated examination was being constructed and given for the rank of lieutenant, a goal which we supported.

8. We were unaware that there were expressed or implied agreements that the results of that examination would be jockeyed in order to achieve some quota preference based on race or ethnic origin.

9. We are shocked that the parties to this suit consented to such a procedure.

10. The procedure amounts to nothing more than reverse discrimination in which promotions are being based, not on merit, but on factors of race and ethnic origin.

11. We believe that such a procedure is contrary to the constitution of the United States to the statutes of the United States and, in particular, to the Equal Employment Opportunity Act, as well as to the charter of the City of New Haven and the laws for reason stated in the motion and, in particular, to protect interests which will be affected by any adjudication in this matter.

12. We are prepared expeditiously to proceed to an early trial in this case and do not take this action for reason of delay or bad faith.

13. The allegations of the Motion to Intervene are true and correct to the best of my information and belief.

Albert Serletti

Sworn to and subscribed before me this 20th day of September, 1974, at New Haven, Connecticut.

S J DANIEL SAGARIN
Commissioner of Superior Court

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

VS.

: CIVIL NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL

: September 19, 1974

MOTION TO INTERVENE AS DEFENDANTS
AND CROSS CLAIMANTS

Firefighter's Committee to Preserve Civil Service, Inc., (FCPCS) a non-profit corporation incorporated under the laws of the State of Connecticut and the individuals named in Exhibit A on behalf of themselves and of all persons in the New Haven Fire Department similarly situated, all being non-minority fire fighters within the New Haven department of fire services in ranks from private to battalion chief move for leave to intervene as defendants and cross claimants in this action, in order (1) to assert their proposed motion to reopen the judgment of this court based on an Order dated August 30, 1974; (2) to appeal said Order, if necessary; (3) to participate in this litigation by raising defenses and cross claims in accordance with the proposed answer and proposed cross claim attached hereto on the grounds that:

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1. This action was begun on October 3, 1974, by the named plaintiffs against the named defendants and proceeded to the Order of August 30, 1974, without ever having been heard on the merits.

2. The interveners should have been formally advised of the suit, either individually or as members of a class potentially adversely affected by the litigation.

3. At significant times during the litigation, particularly in the pre-trial conferences preceding the December 5, 1973 preliminary injunction and the August 30, 1974 Order and Judgment, the proceedings were held in closed session and subject to orders sealing the record of the proceeding.

4. The interveners are directly affected by the Order of August 30, 1974, which on information and belief permits and orders promotions to be made on a basis of race and not merit in violation of the interveners' (a) constitutional rights to Due Process and Equal Protection of the law; (b) statutory rights preserved to them under Title 42 U.S.C. Sections 1981 and 1983, barring deprivation under color of state statute, law, ordinance, regulation or usage of rights, privileges and immunities secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, and Title 42 U.S.C. Sections 2000e et. sec. as amended barring discrimination in employment on the basis of race, color or national origin; (c) rights guaranteed in the Charter of the City of New Haven and the laws of the State of Connecticut; and (d) rights bargained for the collective bargaining agreement existing between the City of

New Haven and Local 825 of the International Association of Fire-fighter's, AFL-CIO.

5. The applicants have an interest in the transaction which is the subject of the answer and they are so situated that the disposition of this action as a practical matter impedes and impairs their ability to protect that interest and that interest is not adequately represented by existing parties. Applicants are, therefore, entitled to intervene as of right under Rule 24(a) (2) of Federal Rules of Civil Procedure. Assuming arguendo ~~they~~ were not entitled to intervene as of right they should be entitled to intervene as a matter of discretion pursuant to Rule 24(b), Federal Rules of Civil Procedure.

6. On the information and belief the following matters have incurred during the course of this litigation which were until recently unknown to the interveners:

(a) The originally named defendants were willing to negotiate in manner depriving the intervening applicants of constitutional, statutory, and contractual rights in order to avoid a damage claim by the plaintiffs.

(b) On or about December 5, 1973, the parties to the litigation agreed in violation of the constitution, statute, and contracts previously cited to a pre-established result for promotional exams subsequently to be held.

(c) The Order of August 30, 1974, implements that prior undisclosed, sealed understanding.

(d) The applicants never have been adequately represented, have never had an opportunity to present to the court factors mitigating against an order such as the order of August 30, 1974, and have been deprived of their rights without due process of law.

WHEREFORE, the interveners pray that the Motion to Intervene be in all things granted.

J. DANIEL SAGARIN
Attorney for Intervenors
855 Main Street
Bridgeport, Connecticut

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J. DANIEL SAGARIN

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

VS.

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MEMBERS OF THE BOARD OF FIRE
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PROPOSED ANSWER AND CROSS-CLAIM OF
INTERVENORS FIREFIGHTER'S COMMITTEE
FOR THE PRESERVATION OF CIVIL SERVICE,
ET AL

1. Paragraph one of the complaint is admitted to the extent it purports to claim this to be an action for declaratory and injunctive relief, but all substantive allegations are denied.
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3. As to paragraph 5, the intervenors are without sufficient information and belief with which to form an opinion and therefore leave plaintiffs to the proof of paragraphs 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k.
4. Paragraph 6 is denied.
5. Paragraph 7 is denied.
6. Paragraph 8 is denied.
7. Paragraph 9 is admitted except for the last sentence.
8. Except for the last sentence, paragraph 10 is admitted. The last sentence is denied.

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9. Paragraph 12 is denied.
10. Paragraph 13 is denied.
11. As to paragraphs 14, 15, 16, 17, 18, and 19, the intervenors are without sufficient information and belief with which to form an opinion.
12. As to paragraph 20 intervenors incorporate by reference the same responses as if fully set forth herein.
13. Paragraph 21 is admitted.
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THIRD AFFIRMATIVE DEFENSE

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CROSS COMPLAINT

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2. This Cross Complaint is brought pursuant to 42 U.S.C. Sections 1981 and 1983 barring deprivation under color of State Statute, law ordinance, regulations or usage of rights, privileges and immunities secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, and Title 42 U.S.C. Sections 2000e et seq. as amended barring discrimination in employment on the basis of race, color, or national origin. Cross claimants also seek a declaratory judgment pursuant to Title 28 U.S.C. Section 2201. The matter in controversy exclusive of interests and costs exceeds the sum of TEN THOUSAND (\$10,000.00) DOLLARS. Jurisdiction is conferred on this court by Title 28, U.S.C. Section 1331 and 1343 (3) and Title 42, U.S.C. Section 2000e-5(f).

3. The class consists of all those non minorities (minority being used in the sense as it is used in paragraph 3 of the

complaint in this action) who may be affected by any relief consented to or ordered establishing any quota based on race; religion, or national origin.

4. (a) The Fireman's Committee for the Preservation of Civil Service, Inc. is a non-profit corporation incorporated under laws of the State of Connecticut. Its charter purpose is, among other things, to preserve a system of promotion within municipal fire departments based solely on merit and unrelated to the race, religion, or national origin of the applicant for promotion.

(b) Individual cross claimants are listed and described in Exhibit "A" which is attached hereto and are all individuals currently serving on the New Haven Fire Department in ranks ranging from private to battalion chief.

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carrying or entering into any agreement or system of promotion in any way based on the promotional applicants race, religion or national origin;

- (4) Damages of \$100,000.00;
- (5) Such additional relief, as may appear to this court to be equitable and just;
- (6) Allow plaintiffs their costs herein, including reasonable attorney's fees.

DATED: September 18, 1974.

THE CROSS CLAIMANTS INTERVENORS

BY

J. DANIEL SAGARIN
Their Attorney
855 Main Street
Bridgeport, Connecticut

77A

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UNITED STATES DISTRICT COURT
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FIREBIRD SOCIETY, ET AL

VS.

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COMMISSIONERS, ET AL

: September 19, 1974

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reopen the Order of this court of August 30, 1974, on
the grounds that:

1. The interveners and those they purport to represent
have a right to intervene in this action.
2. The judgment entered in this matter affects rights pro-
tected to the interveners and those they purport to represent by
by the Constitution of the United States, Title 42 U.S.C. Sections
1981 and 1983, Title 42 U.S.C. Sections 2000e et seq. as amended,
as well as by the Charter of the City of New Haven, State of
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3. The prosecution of this litigation has been conducted
in a manner designed to prevent interveners from access to inform-

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4. On information and belief persons listed on the order of this court of August 30, 1974, have been placed on said list, not by reason of merit, but solely by reason of racial background or ethnic origin.

5. The affect of said order is to deprive the intervenors of the ability to compete honestly and fairly for promotions within the New Haven Department of Fire Services.

6. The Court of Appeals for the Second Circuit has stated in a remarkably similar case Bridgeport Guardians v. Members of the Bridgeport Civil Service Commission 482 F. 2d 1333, 1341 (2 Cir. 1973), "the imposition of a quota will obviously discriminate against those Whites who have embarked upon a (fire) career with the expectation of advancement only now to be denied because of their color alone. The impact of the quota upon these men can be harsh and can only exacerbate rather than diminish racial attitudes. (citing authority) (Fire) moral is again a proper concern of the ^{court} welfare of the whole community if the whole community is to be considered. We see no purpose incurring a past mischief by imposing a new one which is deliberately tainted". The court, thereupon struck from the lower court's ruling quota relief similar to the instant order of August 30, 1974, all quota relief for the supervisory ranks.

Accordingly, we believe that the order of August 30, 1974, entered in chambers based on sealed and secret agreements reached

in December of 1973, without the applying intervenors having been afforded an opportunity to be heard is contrary to the law of this circuit and is in violation of the rights of the applying intervenors.

We ask the Order be reopened and intervenors be given an opportunity to be heard.

Respectfully submitted,

J. DANIEL SAGARIN
Attorney for Intervenors
855 Main Street
Bridgeport, Connecticut

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been forwarded, postage prepaid, to MICHAEL P. KOSKOFF, 1241 Main Street, Bridgeport, Connecticut, DAVID N. ROSEN, 265 Church Street, New Haven, Connecticut, and THOMAS F. KEYES, JR., 205 Church Street, New Haven, Connecticut, and W. PAUL FLYNN, 132 Temple, New Haven, Connecticut.

J. DANIEL SAGARIN

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

VS.

: CIVIL ACTION NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL

: September 19, 1974

MOTION TO EXTEND TIME TO FILE
APPEAL FROM ORDER OF AUGUST 30, 1974

The applying intervenors (FCPCS et al) move this court for an order extending the time within which to appeal this court's order of August 30, 1974 for two (2) weeks following this court's decision on:

1. Intervenors' Application to Intervene.
2. Intervenors' Motion to Reopen.
3. Intervenors Motion to Stay Execution.

Unless said motion is granted, intervenors may be deprived of the opportunity to appeal the order affecting their rights.

Respectfully submitted,

J. DANIEL SAGARIN
Attorney for Intervenors
855 Main Street
Bridgeport, Connecticut

ORDER

This is to order that the above entitled action be
GRANTED/DENIED.

82A

INTERVENORS' OFFER OF PROOF

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

: CIVIL NO. 15876

VS.

:

MEMBERS OF THE BOARD OF
FIRE COMMISSIONERS, ET AL

: October 8, 1974

INTERVENORS' OFFER OF PROOF

In support of their application to intervene, the intervenors offer to prove and claim upon a hearing they would be able to prove the following facts:

(1) The Firefighters' Committee to Preserve Civil Service, Inc. is a non-profit Connecticut non-stock corporation whose charter purpose is, inter alia,

"To serve as an organization dedicated to the preservation of a system of appointments to and promotions within municipal fire departments based solely on merit and devoid of considerations of race, religion, or creed or political considerations, to promote and stimulate the responsiveness of the media to the aforesaid goal; to assist and participate where proper and necessary to accomplish said goal".

(2) The corporation was not in existence at the time of the court's order of August 30, 1974, but was organized and formed thereafter with its initial goal of attempting to provide a forum for the members of the corporation with respect to attempts to intervene in this law suit and to set aside the

court's order.

(3) The individual intervenors are firefighters on the New Haven Department of Fire Services holding in ranks as indicated on the Exhibit A attached to the Application to Intervene. Some of those are currently on the lieutenant's list which was attached as Exhibit A to the order of this court of August 30, 1974. Donald Acerra, Raymond Cassita, John Cleary, Raymond Luycks, Knud Sondergaard, are on the lieutenant's list and would have received rankings higher on that list and become eligible for the agreement of the parties to the law suit permitting the slotting in of minority members of the fire department who had received lower ranks on the examination than the named individuals.

Martin O'Connor and George Boucher currently rank first and second on the lieutenant's list and seek to intervene in this action to set aside the order of the court despite the fact that they will be appointed even under the court order. They desire so to do in order to preserve the principal of appointments based on merit and not on race or ethnic origin.

(4) The applying intervenors seek to intervene an order to preserve a system of promotions within and appointments to the New Haven Department of Fire Services based upon merit and not upon considerations of race. Positions in the New Haven Department of Fire Services which are based on race or ethnic origin have a serious detrimental effect on the morale, efficiency, and performance of the fire services.

(5) The intervenors did not have the proper notice of this action and should have been named as parties to begin

with.

(6) At one point, at least one of the intervenors, including Albert Serletti, attempted to gain access to one of the chamber conferences but was denied access. He was told by person to believed to be the trial court's secretary that he could not come in because he did not have an attorney.

(7) The agreement pursuant to which the court's order of August 30, 1974, was based, was reached in a chamber conference in December of 1973, the results of which were sealed until the initial hearing on these motions. The intervenors had no way of finding out the terms and conditions of that sealed order because the parties to it, including those certain named captains and persons waiting for appointments to the New Haven Department of Fire Services, were enjoined from disclosing the terms and conditions of said order by the court.

(8) If said order had been publicized and had not been kept secret, the intervenors would have promptly attempted to intervene to oppose any plan contemplating promotions or appointments based on race. The intervenors were prevented from intervening by their lack of knowledge caused by the deliberate actions of the court and the parties to this case.

(9) The parties to the case had interests conflicting with those of the intervenors. The City faced a million dollar damage claim. The captains and privates, purportedly represented by Attorney W. Paul Flynn, had an interest in an immediate

lifting of the preliminary injunction and the plaintiffs were seeking appointments and promotions by reason of race or ethnic origin. No one adequately represented the intervenors.

(10) It was the understanding of the individual intervenors that all that was being sought in connection with any settlement was the institution of job validated examinations, a goal with which the intervenors agreed. This information was based in part upon a statement by the president of the Firebird Society at a union meeting that the Firebirds were seeking only non-culturally biased competitive examinations.

(11) The posting of any notice to the extent any notices were posted, is not a method capable of reaching the vast majority of firemen for several reasons, including the following:

(a) That Firefighters work different schedules often having several days off in a row during which time old notices are covered over or taken off the bulletin board.

(b) Many Firefighters do not read the bulletin board.

(c) Important notices are brought to the attention of the Firefighters by reading the same at role call.

(d) This notice which plaintiffs claim was distributed was never read at any roll call.

(12) The list attached to the order of this court of August 30, 1974, does not reflect the promotional merit of the persons on the list. Rather, minority members of the fire department have been slotted in without regard to their comparative performance vis a vis non minority persons subsequent on the list on the examination.

(13) The examination from which the list was compiled was job related, and one doing better on the exam could reasonably be expected to perform better on the job. Performance on the job is important not only to the morale of the department, but indeed to the very health and safety of the members of the department. A less qualified lieutenant might make a fatal error in judgment affecting the lives and safety of the intervenors and the class they purport to represent, as well as the citizens of the City of New Haven.

(14) The settlement in this case was reached as a result of many closed door chamber conferences of which the intervenors had neither knowledge nor notification.

(15) Since the City of New Haven has the address of all of the members of the department of fire services, the plaintiffs or the defendants could easily have notified by registered mail of the suit, or at least of the proposed settlement, each of the members of the Department of Fire Services to provide that member with an opportunity to intervene in the action if he so saw fit.

(16) The class action procedure under the Federal Rules was also available for notification of the intervenors.

(17) As the sealing of the order of December of 1973

indicates, the entire course of proceeding was designed to prevent knowledge of the settlement; namely the intervenors in the class they seek to represent. The reason for the secrecy was the fact that the parties to the litigation knew the intervenors would oppose the order and sought to exclude them from consideration in the settlement process. The intervenors were not consulted either individually or as a group in reaching the proposed settlement which was ultimately implemented in the court's order of August 30, 1974. There is no adequate explanation for the sealing of the December 1973 order.

(18) Any allegations made in chambers or in open court that minority areas of the City of New Haven are not being adequately serviced by the members of the Fire Department or the City of New Haven.

(19) The intervenors seek to intervene in this action, not for the purpose of delay or for any other purpose other than to protect their constitutionally recognized rights and to prevent the implementation of what appears on its face to be an order which contravenes the Constitution of the United States, the Equal Employment Opportunity Act, the Charter of the City of New Haven and the collective bargaining agreement which governs the relationship between the City of New Haven and the members of the Department of Fire Services.

(20) The court file does not reflect that Attorney W. Paul Flynn intervened for anyone at all, there being no motion or application for intervention and there being no indication of a ruling on said application. If nonetheless he did, he did not represent any of the intervenors or of the class they purport to represent; and he was not acting directly or indirectly on their

behalf.

(21) Following the lieutenant's examination which became the subject of this court's order, an examination prepared by a qualified person-Dr. Charles Flynn of the University of Connecticut-the initial results were distributed to this court which indicated to the parties that it was not satisfied with the results of the examination and asked the parties to change the results in order to reflect the previously sealed December, 1973 understanding.

(22) The intervenors first learned of the slotting in procedure approximately ten (10) days before filing the Application to Intervene.

(23) The numbers 22 and 28 in the order of court of August 30, 1974, were arrived at by a guess as to the numbers of lieutenants who would be promoted during the expected life of the list. The nonminorities who would otherwise rank higher are prejudiced by delay . promotions to the rank of lieutenant and by delayed eligibility for promotion to higher ranks. Those beyond the number twenty-eight are prejudiced by the foreclosure to them of slots which might become available for promotion now or in the future. All of the intervenors and their class are being prejudiced by the implementation of a promotional system based on racial and ethnic origins which will likely result in diminished morale, efficiency, safety and public service.

RESPECTFULLY SUBMITTED,

The Intervenors (F.C.P.C.S. et al)

J. DANIEL SAGARIN
Their Attorney
Schless and Sagarin
855 Main Street
Bridgeport, Conn.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was forwarded, postage prepaid, to MICHAEL P. KOSKOFF, ESQUIRE; DAVID N. ROSEN, ESQUIRE; THOMAS F. KEYES, JR., ESQUIRE; and W. PAUL FLYNN, ESQUIRE, on this 8th day of October, 1974.

J. DANIEL SAGARIN

90A

APPLYING INTERVENORS' (FCPCS, ET AL.)
OFFER OF PROOF

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

: CIVIL NO. 15876

v.

:

MEMBERS OF THE BOARD OF
FIRE COMMISSIONERS, ET AL : November 8, 1974

APPLYING INTERVENORS' (F.C.P.C.S. et al)
OFFER OF PROOF

The following supplements the Intervenors' Initial Offer of Proof of October 8, 1974, in an effort to clarify the issues before the court, and to insure that there is no misunderstanding as to the nature of the intervenors' claims of proof.

(24) On December 5, 1973, this Court issued an Order for public release which purportedly contained the terms of the settlement agreement between the parties and the suit then pending. A copy of that Order is attached hereto as Exhibit "A".

(25) Exhibit A did not in fact contain the entire agreement between the parties, but rather deliberately omitted reference to agreements concerning promotions which were contained in a sealed Order attached hereto as Exhibit "B".

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Exhibit B was not unsealed until after the Court's granting of the Interveners' Application to Open the Sealed Documents on or about October 1, 1974.

Exhibit B constitutes an agreement among the parties to assure at least the promotion of seven minority members to the rank of lieutenant, regardless of those minority members ranking on competitive examinations.

(26) Following the grading of the lieutenant's examination in the Spring of 1974, the parties made a number of efforts to accomplish the goals of the agreement of December, 1973 - to wit, the appointment of seven minority lieutenants.

The reason that the efforts were necessary was that the minority members who took the examination did not fare well enough to achieve promotion on their own merit.

An example of these attempts is Exhibit "C" a document which was also contained in the sealed envelope.

(27) Exhibit C contains the raw scores on the written examination of the ranking individuals who took the examination. Exhibit C also contains an attempt to add to the minority members raw scores five points

Since the raw scores were to count 55% of the final promotional grade, the addition of five points was, in effect, an addition of five times $\frac{100}{55}$ or approximately nine and one half points

raw score.

(28) While Exhibit C was not adopted as the final basis for the Court's August 30, 1974, Order it does show that those minority individuals who are to be appointed as lieutenants pursuant to the August 30, 1974 Order are being promoted ahead of non-minority members who did better on the examination than did they, and in some instances in lieu of non-minority members, who should otherwise be appointed.

(29) The minority members on the list attached to the Court's Order of August 30, 1974 are Earl Geyer, Donald Wilson, Charles Goodson, George Sweeney, Robert Miller, Charles Holness, Tim Watkins.

Indeed, under the grading system, Holness and Watkins did not even accomplish a passing grade of seventy even with forty-five efficiency points.

(30) The efficiency rating system which counted for forty-five points was compiled under directions pursuant to which minorities were given top grades of forty-five, thus inversely discriminating against non-minorities.

(31) The Court's order actually resulted from the compilation of two lists; one for minorities, one for non-minorities.

(32) Despite this fact there were public denials of the use

of two lists for promotion to the rank of lieutenant.

(33) After the December 5 Order was published it was applicants continued understanding that with respect to the promotional rank all that was being sought was a job related and validated examination.

(34) Section XX of the Collective Bargaining Agreement provides as follows:

"Non-discrimination - there shall be no discrimination, penalty, coercion, or intimation of any kind against any employee for reasons of race, creed or color, religious belief, union membership, national origin, or union activity".

(35) Section 127 of the Charter of the City of New Haven, Board of Commissioners shall have sole power of appointment and promotion of all officers and employees of their respective departments, under such rules and regulations as they may adopt for the purpose, and in accordance with civil service rules.

(36) The civil services rules and regulations of the City of New Haven provide in pertinent part as follows:

"No person in the classified service of the City or seeking admission thereto shall be appointed, promoted, reduced, removed, or in any way favored or discriminated against because of his race, sex, his national origin, or his political or religious opinion or affiliation." (p. 9)

Those rules further provide as follows:

"The objective of these rules and regulations is to assist the administration of municipal government in New Haven to provide the most effective and economical services possible to the residents of our community through an equitable Civil Service system which assures fair treatment of those who compete for original employment and promotion."
(Prethis)

(37) Rule III covers examinations for Civil Service positions. The copy of those rules are attached hereto as Exhibit "D".

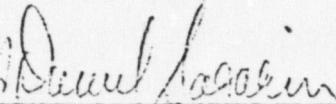
Exhibit D provides, in pertinent part, that no change in rules shall be made except after public hearing advertised at least three times in some daily newspaper published in New Haven giving at least two weeks notice of such proposed change. No such notice was given of the proposed changes and promotional ranks in this case, although applicants could reasonably expect it would.

Exhibit D further provides that the examination grades shall be based on a scale of one hundred points. No appointments or promotions within any class shall be made except from those applicants, not exceeding three, who shall stand highest on the list of those who shall have passed an examination of at least seventy percentum and have received a certificate to that effect from the Civil Service Board...

The procedures followed in Rule III (Exhibit D) were not followed in this case.

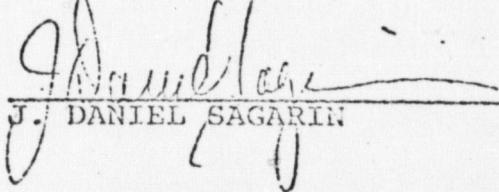
THE INTERVENORS

BY


J. DANIEL SAGARIN
Their Attorney
Schless and Sagarin
855 Main Street
Bridgeport, Connecticut

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was forwarded, postage prepaid, to MICHAEL P. KOSKOFF, ESQUIRE; DAVID N. ROSEN, ESQUIRE; THOMAS F. KEYES, JR., ESQUIRE; and W. PAUL FLYNN, ESQUIRE on this 8 day of November, 1974.


J. DANIEL SAGARIN

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"C"

This list is predicated upon the accuracy of the figures on the raw score column of the sheets made available to the Court and to all counsel.

By way of explanation, the maximum efficiency score would be 45. Any figure designated for efficiency, therefore, would represent the total number of points designated for efficiency.

The maximum number of points on the written test was 55, however, the number of questions present was 100. Thus, if a candidate score 60 correct answers out of a possible 100, his score would be a total of 33 points to be added to his efficiency score. If he received an optimum efficiency score, he would achieve a total of 45 for efficiency plus 33 on the test equals 78.

Finally - there are 5 houses in the City that service a basically black residential area. Thus, to accomodate the need for neighborhood cooperation and respect, they have been allocated 5 neighborhood points to those candidates who scored passing grades or within .25 of passing grades on the written test.

No points have been adjusted for agility.

1. Martin O'Connor	*81	44.55 plus 45 = 89.55
2. George Boucher	74	40.70 plus 45 = 85.70
3. William Muggleton	67	36.85 plus 45 = 81.85
4. Boris Starzyk	67	36.85 plus 45 = 81.85
5. Robert Foley	65	35.75 plus 45 = 80.75
6. Robert Baker	64	35.20 plus 45 = 80.20
7. Peter Fertig	64	35.20 plus 45 = 80.20
8. Donald Hennessey	63	34.65 plus 45 = 79.65
9. Earl Geyer	53	25* + 29.15 plus 45 = 79.15
10. Walter Furgalack	62	34.10 plus 45 = 79.10

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Paul Looney

12.	Donald Wilson	51 + 5 +	28.05 plus 45 = 73.05
13.	Joseph Quirk	60	33.00 plus 45 = 78.00
14.	Charles Goodson	50 + 5 +	27.50 plus 45 = 77.50
15.	Edward Fitzgerald	59	32.45 plus 45 = 77.45
16.	Robert Callahan	62	34.10 plus 45 = 77.10
17.	Thomas Urban	62	34.10 plus 45 = 77.10
18.	Anthony Gambardella	58	31.90 plus 45 = 76.90
19.	William Gambardella	58	31.90 plus 45 = 76.90
20.	Timothy King	58	31.90 plus 45 = 76.90
21.	Robert LaCroix	58	31.90 plus 45 = 76.90
22.	Frank Martin	58	31.90 plus 45 = 76.90
23.	George Price	58	33.45 plus 45 = 78.55
24.	Donald Accra	61	34.10 plus 45 = 76.40
25.	George Sweeney	48 + 5 +	26.40 plus 45 = 76.40
26.	Raymond Carsista	57	31.35 plus 45 = 76.35
27.	Ruid Sondergaard	57	31.35 plus 45 = 76.35
28.	Raymond Luyckx	62	34.10 plus 42 = 76.10
29.	John Cleary	60	33.00 plus 43 = 76.00
30.	Richard Williams	56	30.80 plus 45 = 75.80
31.	John Sullivan	55	30.25 plus 45 = 75.25
32.	Charles Holness	45 5 +	24.75 plus 45 = 74.75
33.	Leonard Borelli	51	29.70 plus 45 = 74.70
34.	James Coady	54	29.70 plus 45 = 74.70
35.	Edward Houdt	54	29.70 plus 45 = 74.70
36.	John Mulligan	54	29.70 plus 45 = 74.70
37.	James Brandt	57	31.35 plus 43 = 74.35
38.	Kevin Donovan	57	31.35 plus 43 = 74.35
39.	Tim Watkins	44 5 +	24.20 plus 45 = 74.20
40.	John Doyle	53	29.15 plus 45 = 74.15
41.	Michael Cinchila	56	31.20 plus 45 = 73.90

425.	James La Bos	43	5 +	23.65 plus 45 = 73.65
43.	James Daniel	52		23.60 plus 45 = 73.60
44.	Raymond Sullivan	55		20.25 plus 45 = 73.25
45.	Paul Tescion	51		28.05 plus 45 = 73.05
46.	Eugene Calzetta	51		28.05 plus 45 = 73.05
47.	Kenneth Goodale	54		29.70 plus 43 = 72.70
48.	Fred Geier	50		27.50 plus 45 = 72.50
49.	Nicholas Candido	59		32.40 plus 40 = 72.40
50.	Thomas Knudsen	55		30.25 plus 42 = 72.25
51.	John Bohan	49		26.95 plus 45 = 71.95
52.	Joseph Lockwood	52		28.60 plus 43 = 71.60
53.	Marcus Sullivan	50		27.50 plus 45 = 71.50
54.	Martin Goodson	54	5 +	21.45 plus 45 = 71.45
55.	Gerald Emright	48		26.40 plus 45 = 71.40
56.	Robert Whelan	53		29.15 plus 42 = 71.15
57.	John Blasink	49		26.95 plus 45 = 70.95
58.	Marion Robinson	38	5 +	20.90 plus 45 = 70.90
59.	Marine Glass	56		30.85 plus 40 = 70.85
60.	John Malone	47		27.85 plus 45 = 70.85
61.	Martin King	47		25.85 plus 45 = 70.85
62.	Peter Serletti	52		23.60 plus 42 = 70.60
63.	Leigh Jackson	46		25.40 plus 45 = 70.40
64.	Peter Martin	46		25.40 plus 45 = 70.40
65.	David McDonald	46		25.40 plus 45 = 70.40
66.	Noel Lambert	46		25.40 plus 45 = 70.40

the armed forces and honorable separation therefrom and submit for the inspection of the Civil Service Board his honorable discharge or photostat or certified copy of his service record and, in case of disability claim, proof of such disability from the veterans' administration.

RULE VI—Examinations

Competitive Examinations

It shall be the duty of said board to prescribe rules for ascertaining the competency of applicants for positions or promotions for all positions in the city government except the elective officers commissioners, officials appointed by the mayor, superintendents, assistant superintendents, principals and teachers employed by the board of education and the librarian, assistant librarians, and superintendents of the different departments of the public library. Said board shall, under such rules as it may adopt, hold competitive examinations as a basis for recommendations respecting any such positions or promotions. Said board shall also adopt rules as it may deem effective, providing for the registration and selection of all laborers to be employed by the city, which shall relate only to their capacity for labor, their habits as to honesty, industry and sobriety.
(Section 202, Revised Charter, 1952)

Change in Rules

Whenever said board shall have adopted any rules under any of the different provisions of this section, said rules shall not be changed except after public hearing advertised at least three times in some daily newspaper published in New Haven, giving at least two weeks' notice of such proposed change. All rules of said board and the papers of successful candidates shall be public records.
(Section 203, Revised Charter, 1952)

Veterans Preference

Any person who has served in time of war, in the army, navy, air corps, marine corps or coast guard of the United States and has been honorably discharged therefrom shall be entitled to have added to his rating in his entrance examination held under the provisions

of this charter ten points on a scale of one hundred if he is eligible for disability compensation or pension from the United States through the veterans administration, or five points on a scale of one hundred if he is not so eligible, provided that he shall be within the age limit specified for appointment to the position or class of position for which the examination is held, is physically capable of performing the duties of such position and attain in the examination without such added points the minimum rating prescribed for passage of such examination. No credits shall be allowed for promotional examination. (Section 217, Revised Charter, 1952 — See Appendix I)

Section 1. Examination Announcement

- (a) The Civil Service Board shall give public notice of all competitive examinations by one advertisement inserted in each of the daily newspapers issued in the City of New Haven, which advertisement in each paper shall be not less than 15 days prior to the date set for each examination so advertised. (Section 207E, Revised Charter 1952)
- (b) The Civil Service Board shall give the examinations such other publicity as it may deem necessary to attract the optimum number of qualified applicants.

Section 2. Kinds of Examinations

Examinations shall be announced and administered as one or more of the following kinds:

- a. Promotional competitive examinations in which only qualified City employees in the classified service may compete.
- b. Open competitive examinations in which all qualified applicants may participate.

Section 3. Character of Examinations

Examinations shall be practical in nature, shall relate to matters which fairly measure the relative fitness and capacity of the applicants to discharge the duties of the position which they seek, and shall take into account character, training, experience, physical and mental fitness.

No question in any examination shall relate to race or to political or religious opinions, affiliations or service.

The competitive nature of the examinations shall not be construed to require that there be more than one person eligible to take an examination.

Section 4. Content of Examinations

Examinations may contain one or more of the following tests as may be determined by the Civil Service Board.

- a. Written tests of aptitudes, mental fitness and knowledge of the work.
- b. Oral tests or interviews to evaluate education, training, experience and other personal qualifications. When only oral examinations are deemed advisable, then so far as is practicable a stenographic record of such oral questions and of the answers thereto shall be kept, which will be filed with the applicant's papers.
- c. Performance tests to demonstrate skill and ability in performing actual work.
- d. Mental aptitude tests and physical tests of strength, fitness and agility.

Section 5. Medical Examinations

The Civil Service Board may require re-examination of eligibles or employees to determine whether they possess the required medical fitness for present or prospective duties.

Section 6. Service Ratings

Where service ratings are required as part of the examination, the appointing authority shall furnish the Civil Service Board such ratings within 30 working days after the completion of the written examination for those positions in which there are less than 100 applicants and at least within 60 working days after the completion of the written examination for those positions in which there are 100 or more applicants.

Section 7. Postponement and Cancellation of Examinations

The Civil Service Board may postpone or cancel examinations at any time for any reasons considered good and sufficient, and such

postponement or cancellation shall be recorded, with the reasons therefor, in the minutes of the Board. All qualified applicants shall be notified of the Board's action.

Section 8. Conduct of Examinations

Examinations shall be conducted under the general direction of the Civil Service Board and by qualified examiners as determined by the Board.

- a. Applicants shall be refused admittance to take an examination if time tests have started.
- b. No candidate shall be admitted to take an examination after any candidate has withdrawn from the examination or has completed his tests and left the room.
- c. Once having left the examination room for any cause whatsoever, except as directed by the examiner or monitor, applicants will not be permitted to return to complete the examination.

Section 9. Examination Grades

The examination grades shall be based on a scale of one hundred points. No appointments or promotions within any class shall be made except from those applicants, not exceeding three, who shall stand highest on the list of those who shall have passed an examination of at least seventy percentum and have received a certificate to that effect from the Civil Service Board and are upon the list of those eligible to such position or promotion under the rules of said board, except supernumerary policemen and substitute firemen. (Section 204, Revised Charter, 1952)

Section 10. Notice of Results of Examinations

When an eligible list has been established, each competitor shall be notified by mail of the result of his examination and, if successful, of his final grade and his relative position on the eligible list, which shall be subject to meeting the Board's medical standards for employment.

Section 11. Examination Papers

All applications and examination papers are the property of the Civil Service Board.

- a. The examination papers of successful candidates shall be public record.
- b. Any candidate may review his examination paper with the Civil Service Board provided the request is made within fifteen days after receiving notice of the result of the examination.
- c. No examination paper or any part thereof or any statement rated as a part of the examination in connection therewith shall be subject to alteration, addition or emendation by the applicant, or to remarking, except that the Board may correct any manifest error in scoring.
- d. An applicant who failed is the only one who can review his own paper.

Section 12. Re-examination

No person who has entered any examination for a position and failed therein or who has withdrawn therefrom shall be admitted within six months from the date of such examination to a new examination for the same position.

RULE IV—Eligible Lists

Section 1. Register of Eligibles

Within sixty working days after the completion of an examination involving less than 100 candidates and within 120 working days after the completion of an examination involving 100 or more candidates, the Civil Service Board shall prepare and maintain a Register of Eligibles for each class of position in the classified service for which either open or promotional examinations have been given. Said Register of Eligibles shall be kept on file in the Office of the Controller.

Section 2. Promulgation

An eligible list shall be in effect from the date on which it is promulgated.

LETTER OF DECEMBER 26, 1974 TO COURT
CONCERNING ROLE OF LOCAL NO. 825,
INCLUDING LETTER OF DECEMBER 20, 1974

December 26, 1974

Honorable Robert C. Zanpano
United States District Judge
141 Church Street
New Haven, Connecticut

C
Re: Firebird Society, et al v. Members of the
Board of Fire Commissioners, et al
Civil Action No. 15-376

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Dear Judge Zanpano:

Because of remarks, we have attempted to insure that there is no misapprehension on the part of the Court that the Union was in any way represented in the prior proceedings.

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Accordingly, on December 16, 1974 I sent a letter to Attorney Paul Flynn asking that the Union officials clarify the role of the Union in the proceedings leading up to the August 30, 1974 order.

The questions which were asked were the following:

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1. Was Local 825, in fact, represented during the negotiations in this case?
2. To what extent did Mr. Rourke and Mr. Gambardella participate in the settlement discussions leading up to the August 30, 1974 order?
3. To the extent that either Mr. Rourke or Mr. Gambardella participated in those settlement discussions were they acting on behalf of the individuals

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whose promotions and appointments were being held up, or were they acting on behalf of the entire union membership?

4. Were Mr. Rourke and Mr. Garberdella aware of the quota relief for promotions prior to August 30, 1974? If so, how were they made aware and when did they first become aware?

5. If they were so aware, did they advise the union membership of the proposed settlement? If so, when? If not, why not?

6. Does your reference to the "published order on recruiting etc." refer only to the hiring relief and not to promotional relief? If it refers to the promotional relief, when did you advise the non-minority members of the promotional relief?

Those questions were answered by letter of December 20, 1974 from Messrs. Rourke and Garberdella, the President and Secretary/Treasurer of Local 825 in a copy of the letter attached hereto.

As you can see, Local 825 was neither in fact nor in law represented.

Thus, it cannot be said that current intervenors were adequately represented.

Very truly yours,

J. DANIEL SAGARIN

JDS/my

enclosure

cc: Michael Koskoff, Esquire
David Rosen, Esquire
Paul W. Flynn, Esquire
Roger Frechette, Esquire

NEW HAVEN FIRE FIGHTERS LOCAL NO. 825

350 Ferry Street New Haven, Connecticut 06513 Tel. 776-3196

*John B. Rourke
President*



*Anthony P. Gambardella
Secretary/Treasurer*

December 20, 1974

J. Daniel Sagarin, Esq.
855 Main Street
Bridgeport, Connecticut 06604

Re: Firebird Society, et al
Vs: Members of the Board of
Fire Commissioners, et al

Dear Mr. Sagarin:

Mr. Flynn has forwarded to us your letter of 12/16/74 with 6 questions and the following are the answers to the questions:

1. The answer to question #1 is No. Local 825 was not represented in this case.

2. Not at all. There was discussion about specific information and in January, 1974, we discussed with Judge Zampano the assignments of Lt. Walsh and Lt. Flynn when Mr. Paul Flynn was in New York for some court trial. Mr. Rourke advised Judge Zampano that these delays in the examinations would cause a war in the fire-houses. Our role was to provide information on numbers of men in the fire service, officers, dates of appointment, probable vacancies, retirements, etc.

3. Obviously we acted for Lt. Flynn and Lt. Walsh on the only occasion when we ever talked with Judge Zampano. Our recollection is that Chief Sweeney and Commissioner DePalma preceeded us in the Judge's chambers about a claim of having violated Judge Zampano's order. Lt. Flynn had called us to tell us that he had to make an appointment with Mr. Keyes because the Walsh & Flynn assignments were going to be held up.

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DEC 23 1971

L. DANIEL SAGARIN

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" SUPPORT YOUR FIRE FIGHTER — THE LIFE HE SAVES MAY BE YOURS "

NEW HAVEN FIRE FIGHTERS LOCAL NO. 825

350 Ferry Street New Haven, Connecticut 06513 Tel. 776 3196

John B. Rourke
President



Anthony P. Gambardella
Secretary/Treasurer

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4. We never heard the phrase quota relief. In January, 1974, we were aware of an in camera order but we did not know what it said. In June, 1974, we asked Mr. Flynn to attend a local union meeting. At that meeting, Mr. Flynn disclosed the existence of the in camera order but did not disclose its language. Mr. Flynn told us some time in May that there had been errors in the City's prepared list; and thereafter we saw the names of the black firefighters who would be on the list as contained in the order, in the afternoon of August 29, 1974, as best as can be reconstructed.

5. There was no notice to the membership until Mr. Flynn delivered a copy of the order to us on or about August 30, 1974.

6. The published order refers only to the system to recruit more black firefighters that was delivered to us in December, 1973 and was posted in the firehouses about that time by the City.

I trust this answers your questions.

Very truly yours,

John B. Rourke
John B. Rourke
President, Local 825

Anthony P. Gambardella
Anthony P. Gambardella
Secy. - Treas. Local 825

cc. W. Paul Flynn, Esq.

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"SUPPORT YOUR FIRE FIGHTER - THE LIFE HE SAVES MAY BE YOURS"

INTERVENORS (FCPCS, ET AL.)
MEMORANDUM IN SUPPORT OF
APPLICATION FOR INTERVENTION

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

: CIVIL NO. 15876

VS.

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL

: October 1, 1974

INTERVENORS (F.C.P.C.S. et al)
MEMORANDUM IN SUPPORT OF
APPLICATION FOR INTERVENTION

The intervenors (F.C.P.C.S. et al) have moved pursuant to Rule 24 of the Federal Rules of Civil Procedure to intervene in this action.

It is our position that we are entitled to intervene as a matter of right pursuant to Rule 24(a)(2). If we are not, then we ought to be granted permission to intervene pursuant to Rule 24(b)(2).

In pertinent part, Rule 24(a)(2) provides that an applicant claiming an interest relating to the property or transaction which is the subject of the action is entitled to intervene if he is so situated that the disposition of the action, may as a practical matter, impair or impede his ability to protect that interest unless the applicant's interest is adequately represented by existing parties.

1. The Applicant's Have an Interest in the Proceeding.

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The applicants have an interest in the outcome of these proceedings within the meaning of Rule 24.

The individual applicants are all member of the New Haven Department of Fire Services holding ranks ranging from fire-fighter to Battalion Chief and they seek to represent a class of intervenors in the same or similar positions to them. The corporate intervenor is a non-stock corporation being incorporated in the State of Connecticut with a designated corporate purpose as being an organization "dedicated to the preservation of a system of appointments to and promotions within municipal fire departments based solely on merit and devoid of considerations of race, religion or creed or political considerations."

The F.C.P.C.S. is a proper organization to raise the issue sought to be raised by the application for intervention and the cross complaint.

Several courts have held "that an organization whose members are injured may represent those members in a proceeding for a judicial review". Sierra Club v. Morton, 405 U.S. 27, (1972); NAACP v. Button, 371 U.S. 415, 428 (1963).

This is especially true when representation of the interest is the primary reason for the organizations existence. Norwalk CORE v. Norwalk Redevelopment Agency, 395 F. 2d 920, 937 (2 Cir. 1968); U.S. v. Board of School Commissioners Indianapolis, 466 F. 2d 573, 576 (7 Cir. 1972).

Similarly, the individuals have a recognized interest in the outcome of these proceedings. Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Service Commission, 482 F.2d. 1333, 1341.

There the court reversed a quota promotional remedy stating that "the imposition of a quota will obviously discriminate against those whites who have embarked upon a police career with the expectation of advancement only to be now denied because of their color alone. Impact of the quota upon these men will be harsh and can only exacerbate rather than diminish racial attitudes...Police moral is again a proper concern if the welfare of the whole community is to be considered."

The applying intervenors have the same interest here which the intervenors in the Guardians case there had.

Thus, when Rule 24 was amended in 1966 its purpose was to eliminate distinctions between property and non-property cases and to relax the earlier standard of restrictive intervention. 3B Moore, Federal Practice, (24-152) (2ed. 1974). Thus, the intervenors are proper parties to raise the issues sought to be raised.

2. The Interest of the Intervenors Is Not Adequately Represented By the Existing Parties.

The next inquiry is whether or not there is adequate representation of the intervenors interest by existing parties.

The existing parties on record in this suit, according to the file are simply the plaintiffs and the named defendants, except for Frank Grazioso who has been dismissed.

The intervenors have been advised that a third attorney was in the case representing certain named members of the New Haven Fire Department. There is no application for intervention on file and there is no ruling as to the application for intervention in the court records. However, even if we assumed there was proper intervention on behalf of some of those members there was still no adequate representation of the intervenors' interest.

The inadequacy of the representation of the existing parties can be shown by the fact that all of the existing parties had conflicting interests which was required to effect their judgment.

The City corporate counsel could not represent the interest of the intervenors, because, among other things, the City was faced with a complaint seeking award of damages and thus the City had a direct pecuniary interest in acceding to at least some of the demands of the plaintiffs in this action in order to avoid a potential judgment against it.

Secondly, if there is a group of intervenors, represented by Attorney W. Paul Flynn, those intervenors each had a direct and immediate interest in the settlement of the litigation without reaching its merits in that each of those persons purportedly

represented by Mr. Flynn was in direct line for a promotion or appointment which was being restrained as a result of a preliminary injunction entered into this case.

Thus, each of those individuals in considering any proposed settlement had a conflicting interest to way against the impact of that settlement.

Accordingly, the immediate action was in a position independently and free from bias to assert the requirements of the Equal Employment Opportunity Act prohibiting quota remedies.

42 U.S.C. Sec. 2000e-2 (H) states impertinent part:

"Notwithstanding any other provision of this subchapter it shall not be an unlawful employment practice for employer to give and act upon the results of a professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin"...

Similarly, 42 U.S.C. Sec. 2000e-2 (J) provides:

"Nothing contained in this subchapter shall be interpreted to require any employer...to grant preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group on account of imbalance which may exist with respect to the total number or percentage of persons national origin employed by any employer referred or classified for employment by any employment agency for labor organization...in comparison with the total number...or percentage of persons of such race, color, religion, sex or national origin in any community, state, section, or other area, or in the available work force in any community, state, section, or other area".

On the information and belief the promotional list to the rank of lieutenant based in part on the results of a professionally administered examination were gerrymandered to achieve a preordained result of a designated number of promotions based on race. We believe that such gerrymandering was in controvention of the explicit laws of the United States quoted above.

3. The Application Is Timely

Rule 24(a) refers to timely application. The question in this case must necessarily be whether this application is or is not timely.

It is important to note in this case that very little in the way of discovery has occurred, there being on file one set of answers to interrogatories. The intervenors' contention here is that the manner of conducting the proceedings to date has been such that they have been prevented from a full knowledge or understanding of the nature of the proceeding or the nature of the intended results of the proceedings on which they could, prior to the release of the August 30, 1974 order determine whether or not they ought to intervene.

The intervenors will testify that they believed that all that was at stake, based on reports to them, was whether or not a new validated examination would be given for promotional procedures.

In fact, that examination was given. All of the intervenors fully expected that non gerrymandered and accurate results would result in promotions from that list.

As of the present date there still exists a sealed record a conference of December of 1973 which we are not able as a matter of course able to view. We have filed a motion to open the proceeding. The intervenors acted promptly as soon as it became known to them that the result of this litigation was, in fact, a quota relief system.

While intervention after an order is ^{un}usual, it is not without precedent. Turner v. Willard, 157 F. Supp. 451 (SDNY. 1957) (Where leave to reopen a judgment was denied to intervenor but intervention was allowed for the purpose of taking an appeal.)

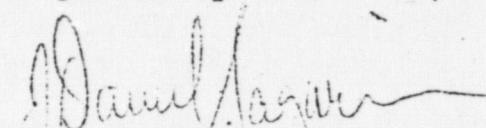
Intervention has been allowed at various stages of other civil rights proceedings. In U.S. v. School Dist. Okla. 367 F. Supp. 198, 201 (D. Okla 1973), intervention was permitted on certain conditions. There the intervenors sought to intervene after a full and plenary hearing on the merits. That is not the case here. Here there has been no hearing on the merits and the intervention will allow the merits to be heard in the case properly decided. In U.S. v. Board of School Commissioners of Indianapolis, *supra*, at 576, the Court of Appeals reversed the trial judge's final order of denial of intervention conditioning the same upon appellants adoption of all previous adjudications.

Here there has been no adjudication on the merits. There has simply been closed hearing in which the intervenors rights were bargained away clandestinely and secretly by parties with interests conflicting with those of the intervenors.

CONCLUSION

Accordingly, we believe the intervenors' application to intervene should be granted either as a matter of right or, at the very least, as a matter of discretion.

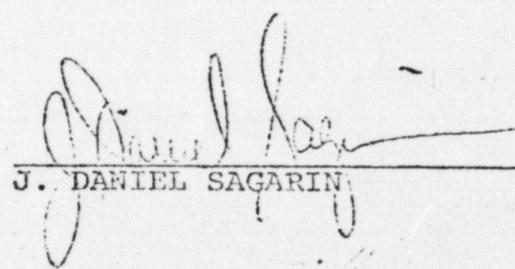
Respectfully submitted,



J. DANIEL SAGARIN
Schless and Sagarin
855 Main Street
Bridgeport, Connecticut

CERTIFICATE OF SERVICE

The foregoing has been hand delivered to all counsel of record. October 1, 1979.



J. DANIEL SAGARIN

APPLYING INTERVENORS' (FCPCS ET AL.)
REPLY BRIEF WITH SUPPLEMENTAL OFFER
OF PROOF

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL

v.

: CIVIL NO. 15876

MEMBERS OF THE BOARD OF
FIRE COMMISSIONERS, ET AL : November 8, 1974

APPLYING INTERVENERS' (F.C.P.C.S. ET AL)
REPLY BRIEF WITH SUPPLEMENTAL OFFER OF
PROOF

INTRODUCTION

This brief is filed in response to Plaintiffs' Brief In Opposition to the Interveners' Application to Intervene and to the named defendants brief in opposition to the same.

1/ Since the group represented by Attorney W. Paul Flynn have not filed papers in opposition to the application, we assume they do not oppose it. 2/

In their brief plaintiffs set forth certain factual claims (Brief, p. 2, et. seq.) some of which are at odds with the intervenor's Offer of Proof. It is our understanding that for present

1. This group has been represented to consist of certain named persons on a captain's list, a lieutenant's list, and a hiring list. That there is no formal record of intervention is simply further evidence of the difficulty an outsider would have in determining what was occurring during the litigation.
2. It is crystal clear that in whatever capacity Mr. Flynn entered the case, it was not as counsel for the firefighters collective bargaining unit Local 825.

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purposes any factual disputes will be resolved in the intervenor's favor. Otherwise we shall have an opportunity to pursue a full hearing to establish the facts we claim to prove. (See Offer of Proof).

We completely disagree with many of plaintiffs' claims. Specifically, plaintiffs' allegation that the in camera order of December 5, 1973 (attached hereto as Exhibit "A") in essence constituted a unilateral promise by plaintiffs not to activate the lawsuit in the event seven minority lieutenants and one minority captain were "made" as a result of the next lieutenants and captains examination is specious. In open court all present parties appeared to accept the fact that the compromise was a quid pro quo. We also dispute the claim that "the court's order was carefully framed not to displace any whites who would otherwise be appointed from the lieutenant's list." There was neither scientific nor sufficient factual basis from which such a determination could be made. Moreover, the court's order takes no account of those who would be appointed to positions but for the slotting in of the seven minority lieutenants.

Plaintiffs make other factual allegations which the intervenor denies and believe they would prove to the contrary.

At page nine the intervenors state, "No assertion is made that even one of the applicants lack knowledge of either the pendency of the law suit or the general nature of the relief which was claimed."

We do not believe the Order of Proof can be so read.

The applicants do claim that they lacked knowledge of the general nature of the relief which was claimed, and, particularly, that there was to be any request or that there was to be any agreement for promotions made on a basis of ethnic origin or race. Indeed if there has been any misunderstanding as to the applicants claim, it should cease here.

The applicants specifically claim that they were subject to agreements, participated in by the court that were designed to, and, did in fact, conceal from the applicants that plaintiffs were seeking promotions based on race and that plaintiffs were seeking to displace high ranking individuals on the lieutenants list.

Among the acts taken in pursuant to this agreement to conceal said facts were the following:

1. That the class defendant procedures were not followed.
2. That applicants were not made parties pursuant to Rule 19.
3. The notice which was sent to the fire department did not contain the entire complaint.
4. The agreements and orders relating to promotions were sealed in December of 1973 for which no adequate

explanation exists except that of concealment from the interveners and the class they seek to represent.

5. Members of the plaintiffs association and of the named defendants made statements indicating that they were seeking only validated exams and were not seeking displacement by reason of race.

I The Applicants Are Entitled To Intervene As A Matter Of Right And Should Have Been Named As Original Parties To The Law Suit Pursuant To The Class Procedures Of Rule 23 Or As Persons Needed For Just Adjudication Pursuant To Rule 19

Plaintiffs and named defendants opposing the intervention contend primarily that the application to intervene is not timely, that the applicants have not alleged a sufficient interest in the outcome of the proceedings and that the applicants have been adequately represented.

In our earliest brief filed at the hearing on the Order To Show Cause we believe we have adequately demonstrated the contrary in all instances, particularly in light of the Offers Of Proof filed with this Court.

We will not here repeat what we have earlier stated.

A. Timeliness

Throughout our Offer Of Proof we have pointed out that the entire proceedings were designed and carried out not to

inform the applicants of the settlement procedures, but to keep the most volatile aspects from their knowledge.

We think it ill behooves the opponents now to claim that because they were successful in keeping these issues from the applicants the Applicants Intervention is somehow untimely.

In support of their claim of untimeliness the opponents rely primarily on United States v. School District of Omaha, 367 F. Supp. 198 (D. C. Neb. 1973) which is discussed in our earlier brief and United States v. Blue Chip Stamp Company, 272 F. Supp. 432 (D. Cal. 1967) affirmed 389 U.S. 580, rehearing denied, 390 U.S. 975).

We believe that the Blue Chip case supports our position on timeliness. In Blue Chip the court was dealing with an application of certain petitioners to intervene under Rule 24(a) of the Federal Rules of Civil Procedure or for permission to intervene under Rule 24(b) and to vacate a consent decree which had been entered in an antitrust case. The petitioners there were seeking to intervene in a case which the government had originally filed charging the defendants with a violation of Sections 1 and 2 of the Sherman Act.

The history of the negotiations which led to the consent decree in that case stand in marked contrast to the procedures which led to the court's order of August 30, 1974 in this case.

There, when the negotiations were begun the government "afforded an opportunity to all defendants and to all others with an interest to participate in the negotiations, three separate consent decrees were proposed, each of which was lodged with the court". (Id at 433-434) In order that interested parties might have time to study each proposed decree and to make known their views with respect to it, there was annexed to each decree a stipulation providing that all signatory parties consented to entry of the given decree after thirty days unless the government withdrew its consent during the thirty day period. Ibid.

Indeed, the first proposed consent decree was objected to and the government subsequently withdrew its consent a second consent decree was objected to and the court sustained the objections. Finally, a third consent decree was proposed and the interveners filed briefs in opposition as amici curiae. Against this background the court, which recognized that "intervention may be allowed after a final judgment or decree if it is necessary to preserve some right..." found that the intervenors who had earlier participated in the proceedings could not now claim that their intervention was timely. Cf. 4 Moore Federal Practice, Section 24.13 (2 ed. 1973).

If the procedure followed in Blue Chip was here followed the interveners would have been invited to intervene as formal parties.

No settlement would have been reached without having providing them an opportunity to have been heard.

The interveners Application to Intervene also falls within the rule set down by the Supreme Court in Cascade Natural Gas Corporation v. El Paso Natural Gas Company, 87 S. Ct. 932 (1967). There the Supreme Court reversed the District Court order denying on appellants the right to intervene an antitrust action brought by the United States against El Paso Natural Gas Company. The intervention was permitted not only after the institution of the case, but after the case had once been to the Supreme Court.

Intervention was specifically permitted in order to help fashion a remedy to protect the interests of the private and public interveners. Here the merits of the case have never been heard. Obviously while petitioners seek to intervene to reopen the entire order there are a great number of middle grounds. It may be that the court can permit petitioners to intervene solely to be heard and to deal with the promotional remedies. That would, of course, leave a major portion of the lawsuit finally adjudicated—that part dealing with the hiring procedures. The remaining litigation would, of course, be significantly shortened.

Another decision which the court may reach is that applicants should be allowed to intervene to be heard on all remedies, assumi-

that there is agreement that past hiring practices did not meet the standards of the Equal Employment Opportunity Act. In either event we are in little different position than the parties were in just prior to the entry of the August 30, 1974 Order. A strict time schedule can be established which would be adhered to by the parties for the remaining litigation.

Accordingly, we believe the application is timely as a matter of law.

B. The Applicants Have A Proper Interest In This Lawsuit

In our initial memorandum we pointed out that the applicants have a real interest in this lawsuit as that term is used in both Rule 24 and Rule 19 of the Federal Rules of Civil Procedure.

Opponents contend the contrary. We pointed out that the applicants both the corporate applicant and the individual applicant represent exactly the type of interest which the Court of Appeals though sufficient to reverse the District Court Judgment in the Bridgeport Guardians v. Members of Bridgeport Civil Service Commission case. 482 F. 2d 1333, 1341 (1973). We agree that the corporate intervenor was not formed at the time at which the lawsuit was filed, but that situation makes no difference in view of the fact that the individuals supporting the ^{3/} corporate intervenor, a sufficient interest in the outcome of the

3. The F.C.P.C.S. is supported by over 75% of the total number of New Haven firefighters.

litigation. As a matter of policy, individuals and groups of individuals affected by lawsuits of this kind should in the first instance be at the very least named as class defendants or served as parties necessary for a just adjudication under Rule 19.

Such a rule would prevent the type of situation which we now have. Namely, that persons adversely affected by a stipulated order will for the first time learn of that order only after it has been entered. Had this Court followed the lead of the Court in Blue Chip, supra., and of the suggestion of the Supreme Court in El Paso, supra., this situation would not have arisen.

Rule 23(c) 2 provides that the Court shall direct to the members of the class the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort. All of the members of the class (non-minority firefighters) could easily have been identified and notified individually.

The parties apparently felt, and the Court apparently agreed, that interested persons should be notified of the existence of the lawsuit, but the notice relied on by the parties—that is, the one distribution of a portion of the complaint and of the temporary restraining order to the department firehouses, and the selected newspaper accounts of what was proceeding is far from what was required under the federal rules and what good judgment would dictate should have been required. Cf. 3B Moore, Federal Practice 23-1151-23-1162 (2 ed. 1974).

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The supplemental offer of proof (para. 34-37) contains specific references to provisions of the Charter of the City of New Haven and of the Civil Service Rules, as well as the collective bargaining agreement in which the interveners have a direct interest, all of which are affected by the court's order.

Exhibit "C" discloses their interest without a doubt. Pursuant to the Court's order individuals who were unable to answer even half of the question correctly on the lieutenant's examination are being placed in a position of command.

What kind of confidence can individuals under their command have in such leaders? Are interveners really safe where men not qualified are called upon to make spot judgments affecting the lives of the members of the class of the applicants and of the citizenry at large in the City of New Haven performed significantly higher than any of the slotted in minority members yet he will be deprived of the opportunity to become a lieutenant for years to come. One does not ipso facto become "qualified" by judicial fiat resulting in test slotting.

Issues involving quota relief and changing of rules are so significant that in all instances those affected should be made formal parties to the law suit as a matter of course. This we attempt to do now.

C. The Applicants Have Not Been Adequately Represented

We believe it is utter nonsense for the plaintiffs to

contend that the applicants had been adequately represented.

One need only look at the Canons of Ethics to determine whether any of the parties in the litigation could properly have represented the applicants' interest.

Mr. Keyes represented a number of defendants who were being sued individually for damages of one million dollars. Could he adequately and properly which adversely affected the members of the intervenors class but which provided for release of liability of such a claim?

Could Mr. Flynn who was representing certain persons whose promotions and appointments were being enjoined properly represent the applicant's interest when an offer was made to withdraw injunctions preventing such promotions and appointments?

And, of course, the plaintiffs have directly antagonistic interests to those of the intervenors.

CONCLUSION

Accordingly the intervenors ask that the Application To Intervene be granted that the Order of August 30, 1974 be reopened in whole or in part and that the intervenors be allowed to answer the complaint and file their cross claim against the City.

RESPECTFULLY SUBMITTED,


DANIEL SIGAREN

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Certificate Of Service

This is to certify that a copy of the foregoing was forwarded, postage prepaid, to MICHAEL P. KOSKOFF, ESQUIRE; DAVID N. ROSEN, ESQUIRE; THOMAS F. KEYES, JR., ESQUIRE; and W. PAUL FLYNN, ESQUIRE, on this 8th day of November, 1974.


J. DANIEL BAGARRI

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RULING ON MOTION TO INTERVENE

FILED

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UNITED STATES DISTRICT COURT U.S. DISTRICT COURT
NEW HAVEN, CONN.

DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL.

v.

CIVIL NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL.

RULING ON MOTION TO INTERVENE

On August 30, 1974, this Court approved and issued a decree which for all practical purposes had the effect of settling before trial the instant lawsuit. All the parties to the action "acquiesced in" and agreed not to appeal the Court's order "in order to end this litigation." Subsequently, on September 20, 1974, the Applicants for Intervention filed motions which seek:

- (a) to intervene as a matter of right under Rule 24(a), F. R. Civ. P.; or
- (b) permission to intervene under Rule 24(b), F. R. Civ. P.;
- (c) to reopen the judgment and vacate the August 30th Order of this Court;
- (d) to participate in this litigation, presumably after judgment is reopened, by raising certain defenses and cross-claims to the action; and
- (e) to appeal the Order of August 30th to the Court of Appeals for the Second Circuit.

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J. DANIEL SAGARIN

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I

On October 5, 1973, this Civil Rights Act suit for declaratory and injunctive relief as well as damages was commenced to challenge the constitutionality of the hiring and promotional procedures with respect to minority groups in the New Haven Department of Fire Services ("Department"). The plaintiffs were the Firebird Society of New Haven, Inc. ("Firebirds"), an organization composed of all the black firemen in the Department, several members of that organization, and certain past and prospective minority applicants to the Department. The defendants included the New Haven Board of Fire Commissioners, the Civil Service Commission of the City of New Haven, the Fire Department and its Chief, and the City of New Haven and its Mayor. [Upon motion, 17 white Captains in the Department who had been appointed but not assigned to duty were permitted to intervene as defendants.] Jurisdiction was premised on 28 U.S.C. § 1333(3) and 42 U.S.C. § 2000e-5(f).

The complaint, filed after the plaintiffs exhausted their administrative remedies with the Equal Employment Opportunity Commission and received a "right to sue" letter from the United States Department of Justice, see 42 U.S.C. § 2000e-5(f), levelled a broad attack on almost all aspects of the hiring and promotional practices of the Department on the ground of discrimination based on race and national origin. The selection of firemen was alleged to have a



racially disproportionate impact because the written examinations were not subject to an impartial professional validity study, were not job-related, and were improperly prepared, evaluated and graded. In addition, it was claimed that discrimination was enhanced by the Department's minimum requirements regarding age, education, height, weight, and prior arrests.

The plaintiffs further contended that there was a policy of discriminating against black firemen in promotional practices. As with the entry procedures, the plaintiffs focused on the written exam, particularly the testing methods utilized for the rank of lieutenant. They also condemned the "time in grade" requirement for promotion and the so-called "efficiency rating" both of which, it was asserted, were merely devices to discriminate against black firemen.

Extensive relief was requested which included, in addition to damages and back pay, the following:

(a) A revised system for promotions under which qualified applicants are to be selected only from the class of plaintiffs, as openings arise, until they are represented as officers in the Department in proportion to their number among residents of the City of New Haven; or

(b) A revised system for promotions under which qualified applicants are to be promoted alternately, one white and one minority from the class of plaintiffs, as openings arise, until they are represented as officers in the New Haven Fire Department in proportion to their number among residents of the City of New Haven; and

(c) A revised system of hiring under which qualified applicants will only be hired from the class of plaintiffs, as openings arise, until they are represented in the Department in proportion to their number among residents of New Haven; or

(d) A complete plan for promotions, recruitment and hiring which includes as part of any proportional hiring plan that such plan shall apply to all hiring done after filing of plaintiffs' complaint with the EEOC.

(e) The granting of seniority to plaintiffs and members of their class back to the date that they first applied for a position in the New Haven Fire Department regardless of whether or not they passed the hiring selection criteria which have been determined to have been discriminatory.

II

When this action was commenced, the plaintiffs moved for immediate injunctive relief, claiming that on the basis of statistics alone, they could demonstrate a prima facie case of discrimination. Cf. Morow v. Crisler, 479 F.2d 960 (5 Cir. 1973) (en banc); Carter v. Gallagher, 452 F.2d 315 (3 Cir. 1971), cert. denied, 406 U.S. 950 (1972).

Among other things, the plaintiffs pointed out that the minority population of New Haven was 30 percent, and that none of the 502 men employed by the Department was Hispanic and 13, or less than 4 percent, were black. There was one black lieutenant out of 61, no black captain out of 34, and no black officer in any higher command position. Thus, of the 107 officers in the Department only one was black, and he held the lowest rank above private.

The plaintiffs further expressed confidence that at an evidentiary hearing they could prove a pattern of willful discrimination against minorities in the Department that extended over a period of many years. Serious claims and examples of intentional discrimination were alleged, supported in part by affidavits. In addition, the plaintiffs maintained that the defendants were attempting to block effective judicial redress by recently appointing 17 white captains from the eligible list just prior to the expiration of that list, and by selecting 13 new trainees (only one of whom was black) from a "substitute list" then in existence. Thus, if the plaintiffs prevailed in their lawsuit, they calculated that the relief they sought would have no practical effect for from one to eight years.

Counsel for the defendants, on the other hand, denied each of the plaintiffs' material allegations. However, with commendable candor, they admitted that the present hiring and promotional methods did have certain "deficiencies" which needed correction. They stressed that the entire matter was under review, and that experts had been retained by the City to design new exams which would meet all legal requirements. In order to avoid a costly, lengthy, and probably divisive lawsuit, they requested that this Court provide guidance to the parties so that their differences might be resolved.

Thereupon, it was agreed as follows:

1. That temporary injunctive relief would issue restraining the defendants from assigning, hiring or promoting anyone not in the plaintiffs' class, and from administering any written exams in conjunction with promotions within the Department;
2. That the 17 newly appointed white captains and the new trainees would not be assigned to duty;
3. That, in order to disseminate notice of the lawsuit and of the right of interested persons to intervene in the action, copies of the Court's order and a list of all the plaintiffs' claims for relief would be posted in each of the City's firehouses, together with a covering notice advising all firemen of the lawsuit and suggesting that all interested firemen "wishing to intervene in this lawsuit are entitled to intervene and should seek counsel immediately to be present at a pre-trial hearing in the District Court at 2 P.M., Monday, October 15, 1973;"
4. That all discovery procedures and evidentiary hearings would be indefinitely postponed until every avenue of settlement was exhausted; and
5. That the plaintiffs would prepare a list of the issues and recommendations for settlement to serve as a guide for future conferences.

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III

The next conference was held on October 15, 1973. In addition to counsel of record, Attorney W. Paul Flynn appeared and stated that although he was counsel for the New Haven Fire Fighters Local No. 825 ("Union"), he was not formally entering an appearance for the Union. However, he did wish to file a motion to intervene in behalf of the 17 white captains whose assignment to duty was enjoined by this Court's order of October 5, 1973. The motion to intervene was orally granted and thereafter Attorney Flynn played an active role in the negotiations.

The basic issues were defined by the plaintiffs as follows:

1. What amount of compensatory and punitive damages should the defendants pay as a result of past discrimination?
2. In the light of past discrimination, what concessions would the defendants make with respect to the "time in grade" restrictions for promotions?
3. What steps toward recruitment would the defendants undertake to increase the number of minorities in the Department?
4. When and how could the defendants devise new entrance and promotional exams to conform to the requirement of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e?

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5. What means would be employed to achieve substantial minority representation in the Department?

6. What method should be utilized to increase minority representation in the ranks of lieutenant and captain?

7. What attorneys' fees should be awarded to plaintiffs' counsel?

IV

Ten months later, due to the extraordinary efforts of counsel and the cooperation of their respective clients, all the aforementioned issues were finally resolved without trial when this Court issued its decree of August 30, 1974.

However desirable, it is an impossible task to recollect and recount herein each and every material factor which culminated in the entry of the final order. The several court hearings and the numerous orders filed by this Court are of course a matter of record. In addition, however, there were 23 chambers conferences, some of which extended long into the evening. These meetings were held with the knowledge and approval of all counsel of record and included, at one time or another: the attorneys for the parties and intervening defendants, high ranking officials of the City, officers of the Union, individuals named as defendants including the Chairman and several members of the Board of Fire Commissioners, certain white firemen who

were not named as parties, the Chief of the Department, and others.

In order to encourage and maintain the free, open and candid exchange of facts, these meetings were regarded by all in attendance to be "off the record" discussions. Despite this, the news media, due to the inevitable "leaks," widely reported the scheduling of these conferences and many of the doings therein. Moreover, counsel were required to make progress reports to their clients and to obtain their consent to the innumerable preliminary agreements which formed the basis for the final decree. Since so many persons were necessarily involved in the negotiations which led to a final settlement, it is difficult to assume that the nature and content of the chambers meetings were secret. In fact, on occasions, counsel informed the Court that at union meetings or while they visited firehouses throughout the City, they were "grilled" on the latest developments and felt obliged to respond.

From the outset it was evident that amicable resolution of the issues required many concessions by the plaintiffs. After the first round of negotiations, the plaintiffs agreed to drop their demand for back pay and for exemplary and actual damages. However, the plaintiffs insisted that minorities occupy 25 percent of the privates' rank, 15 percent of the lieutenants' rank, 15 percent of the captains'

rank, 10 percent of the Battalion Chiefs' rank, and 15 percent of "other supervisory" positions within a period of four years. In addition, the plaintiffs refused to agree to modify the existing orders which restrained the defendants from filling existing vacancies in the Department. It appeared clear to the Court that the defendants would not accede to these demands without substantial modifications, particularly with respect to positions above the rank of private.

Nevertheless, significant progress toward the resolution of most of the issues in the case was made when, after a series of meetings, the parties acquiesced in this Court's Order of December 5, 1973. First, a detailed plan for the recruitment of minorities into the Department was established. Second, the Department was ordered to develop entrance and promotional tests as soon as possible which meet the requirements of 42 U.S.C. §§2000e, et seq. Third, in order to achieve substantial minority representation in the Department, while not displacing any men already employed, the Department was required to hire at least 16 of the next 24 firefighters from among qualified minority group applicants and, thereafter, to hire at least one minority applicant for every non-minority applicant until the total number of minority privates reaches 75. Fourth, since seven vacancies existed at the rank of captain, the Court

had been appointed but not assigned) to fill these positions. Fifth, the Court permitted the 13 probationary firemen (who had been sworn into office but not assigned) to be assigned to regular duty. Sixth, the "time in grade" requirement was modified to provide that any private may take the lieutenant's examination 30 months after his appointment and "other officers" may take the examination for the next higher rank after 12 months at the rank below the one for which the examination is given. Seventh, the defendants promised to exercise "good faith" to insure that minorities would have representation in the ranks of lieutenant and captain. Finally, the Order incorporated the agreement of the parties that the plaintiffs would waive their claims for damages but not attorneys' fees.

The major question remaining at this time concerned the amount of "good faith" on promotions that the defendants had to demonstrate before the suit would be settled. After much negotiation, the plaintiffs agreed not to prosecute the action if seven qualified blacks were selected out of the next 21 lieutenants to be appointed within a two-year period and if, in addition, one qualified black captain was assigned within a reasonable time thereafter. At this Court's request, an "in camera" agreement was drafted which merely placed in writing the plaintiffs' unilateral "promise" not to proceed with the lawsuit in the event seven minority lieutenants and one minority captain were

appointed as a result of the next lieutenants' and captains' examinations. It is important to point out that the examinations in mind were the new tests mandated by this Court's Order of December 5, 1973. It was anticipated that the defendants' experts would prepare these validated examinations prior to February 15, 1974.

Soon thereafter, however, the defendants reported they would be unable to develop validated exams for some time to come. They suggested that the testing for lieutenants proceed as scheduled with the understanding that the results thereof not be disclosed or acted upon until the plaintiffs were afforded the opportunity to renew the suit and address appropriate motions to the Court in the event seven minorities were not within the first 21 eligible for promotion. The plaintiffs agreed and the Court's Order of December 5, 1973 was amended.

Another problem arose when, in violation of this Court's injunction, the Board of Fire Commissioners promoted two white firemen to the rank of lieutenant. The matter was eventually resolved after a series of conferences which included counsel, the members of the Board of Fire Commissioners, officials of the Union, the two promoted firemen, and the Court. The two men were permitted to take their assignments as lieutenants with the reservation that the promotions were open to challenge if plaintiffs should activate the lawsuit in the future.

The lieutenants' examination proceeded on schedule and on May 22, 1974, the defendants presented the results to the Court and the plaintiffs. While seven blacks were demonstrated to be qualified, none appeared in the top 21 rankings. The plaintiffs reiterated their original contentions that the test had a substantial discriminatory impact on minorities and exercised their right to activate the lawsuit. As a result, the injunction covering promotion to the rank of lieutenant was continued, a discovery schedule was agreed upon, and a trial date was set by the Court for September 15, 1974.

While discovery procedures were underway, counsel for the defendants and the intervenors urged the Court on several occasions to reopen settlement negotiations. The Court did so. While perhaps no specific representation was made, the Court is satisfied that it was induced to resume negotiations because high level officials of the City and Union, as well as the party defendants, firmly believed trial should be avoided if any avenue for settlement remained open.

Intensive negotiations commenced again. The main obstacle to a settlement was removed when the plaintiffs agreed to have seven qualified black firemen on the lieutenants' eligibility list "slotted into positions" which would insure their appointments within the two-year period before the list expired by law. Based on their

knowledge and experience, the defendants were reasonably certain that not more than 21 lieutenants would be assigned within the specified period. When the Court expressed the desire that the seven "displaced" white firemen be protected, the parties agreed to the provision in the final decree that the eligibility list shall not expire until "at least 23 appointments shall be made thereon." Whites were placed on the list strictly in order of their combined promotional scores. The blacks were also listed in order of their scores, and their names inserted at intervals in positions 4, 7, 10, 13, 16, 19 and 22 on the eligibility list.

All the agreements arrived at by the parties after ten months of negotiations were incorporated into this Court's Order of August 30, 1974, which decree was "acquiesced in by all of the parties to the suit in order to end this litigation."

V

The Court must consider the motions filed by the Applicants for Intervention (hereinafter "applicants") in light of the background just set forth.

The applicants are the Firefighter's Committee to Preserve Civil Service, Inc., a non-profit corporation organized under Connecticut law after the entry of this Court's Order on August 30, 1974, and certain non-minority firemen within the New Haven Department of Fire Services in

the ranks from private to battalion chief. The sole purpose for the formation of the corporate applicant was to intervene in this lawsuit and to set aside the Court's final decree in order to "preserve a system of promotions within and appointments to the New Haven Department of Fire Services based upon merit and not upon considerations of race." The individual applicants are three captains, two battalion chiefs, one lieutenant, a fireman not on the lieutenants' eligibility list, and nine privates, two of whom are at the top of the current eligibility list and seven of whom rank beyond the 28th position on the list.

At the outset, the Court notes its difficulty in determining what "interest" the applicants seek to protect by intervention. No one of the applicants is adversely affected by the Court's Order: the two privates at the top of the eligibility list will be assigned promptly; the other eight privates would most probably not be assigned even if the seven minorities were removed from the list; and, the remaining individuals either hold the rank of lieutenant or a higher rank. Nor do the applicants who seek to intervene possess a protectible "interest" in the assignment list into which the names of the minority firemen were inserted. The present list was compiled only as a result of the plaintiffs' consent to the lifting of the injunction and to the administration of the non-validated examination, as a starting point in a program

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designed to ameliorate the continuing effects of past discrimination. If the Court's Order were set aside, there is now every reason to believe that appointments and assignments to the rank of lieutenant would be enjoined until validated tests were developed and a new eligibility list drawn from the results thereof. Thus, were the applicants permitted to intervene and to reopen the Court's Order of August 30, 1974, there would necessarily be a nullification of the present eligibility list, and whatever "interest" the applicants had in this list would disappear.

Relying on the principles enunciated in Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Service Commission, 432 F.2d 1333, 1342 (2 Cir. 1973), the applicants assert they are opposed to the implementation of a "quota promotional remedy" which is proscribed by various provisions in the Charter of the City of New Haven, the Civil Service Rules, and the Union's collective bargaining agreement with the Department ..

In Bridgeport Guardians, the Second Circuit condemned a remedial system of promotion whereby a certain ratio of promotions had to come from the minority personnel until 15 percent of the officers were minorities. The Circuit Court reasoned:

. . . the imposition of quotas will obviously discriminate against those Whites who have embarked upon a police career with the expectation of advancement only to be now thwarted because of their color alone. The impact upon these men would be harsh and can only exacerbate rather than diminish racial attitudes.

432 F.2d at 1341.

Here, however, no quota has been imposed. Rather, the terms of the settlement in the case at bar simply grant interim priority relief to qualified members of a minority who have previously been denied equal opportunity for advancement as a result of examinations which had racially disproportionate impact. The merit system remains intact for all future promotions. In the Court's opinion, this remedy is neither forbidden by the Constitution nor prohibited by Title VII of the Civil Rights Act of 1964. See, e.g., Boston Chapter, N.A.A.C.P., Inc. v. Beecher, 504 F.2d 1017 (1 Cir. 1974); Rios v. Enterprise Ass'n Steamfitters Local 633, 501 F.2d 622 (2 Cir. 1974); N.A.A.C.P. v. Allen, 493 F.2d 614, 618-20 (5 Cir. 1974); cf. Morrow v. Crisler, *supra*; Vulcan Society v. C.S.C., 490 F.2d 337 (2 Cir. 1973). Since the applicants lack the prerequisite interest in the subject matter of this action, they may not intervene as of right pursuant to Rule 24(a), F. R. Civ. P.

The applicants have failed in other respects to demonstrate that they have a right to intervene under Rule 24(a) or, alternatively, that they should be permitted to intervene pursuant to Rule 24(b). Both Rules provide for intervention only upon "timely application." The present motions were neither served nor filed until three weeks after the entry of the Order terminating the case. Absent unusual and compelling circumstances, an application to intervene is untimely if the litigation has been concluded and judgment

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entered. See, e.g., Allegheny Corp. v. Kirby, 344 F.2d 571, 574 (2 Cir. 1965), cert. dismissed as improvidently granted, 384 U.S. 23 (1966); United States v. Blue Chip Stamp Company, 272 F.Supp. 432, 435-441 (D.C.Cal. 1967), aff'd sub nom. Thrifty Shoppers Scrip Co. v. United States, 389 U.S. 580 (1968); Slusarski v. United States Lines Co., 28 F.R.D. 388, 390 (E.D.Pa. 1961). No such circumstances exist here.

It seems clear to the Court that the applicants had ample notice of the pendency of the lawsuit and the nature of the relief claimed. The three documents posted in early October, 1973 in each firehouse, which no one of the applicants denies seeing or reading, included: 1) a notice which stated that the lawsuit involved a claim of racial discrimination with respect to "promotions" and invited each interested fireman to intervene in the action; 2) a copy of the complete list of the remedies sought by the plaintiffs, with references throughout to "promotions" and "systems for promotions;" and 3) a copy of this Court's preliminary injunction, enjoining the promotion of "anyone not in plaintiffs' class" and restraining all "written exams in conjunction with promotions." Although an attorney who claimed to speak for the Union appeared and filed a motion to intervene on behalf of 17 white captains, none of the applicants sought to enter into the case at that time. In addition, the Court's Order of December 5, 1973, which was a matter of public record and was widely reported

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by the news media in the area, contained several sections dealing with future hiring and promotions in the Department. If the applicants were truly disturbed by the prospect of a "quota promotional remedy," they might have sought intervention at that time. Instead, the applicants have slept on whatever rights to intervene they may have had and now, dissatisfied with the settlement in the case, seek to set it aside. Cf. Rasle Theaters, Inc. v. Warner Bros. Pictures Distributing Corp., 24 F.R.D. 476, 477 (W.D.Pa. 1959).

Furthermore, to permit the applicants to re-open this case would result in unfair delays and consequences to the parties who have relied on the settlement agreement and the negotiations which produced it. The plaintiffs have already waited almost a year and a half since commencing this suit to vindicate their rights. At all times, the parties have bargained in good faith in the belief that an amicable settlement of a potentially divisive lawsuit was in process. Moreover, during the pendency of this lawsuit, and with the acquiescence of the plaintiffs, recruitment and hiring programs were established, promotions have been made, substitute firemen have been assigned, a schedule for the development of properly validated promotional exams was reached, and procedures for administering promotional examinations in the interim were agreed on and implemented. This complex web of acts in reliance upon the settlement negotiations would have to be untangled if the case were

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reopened, and further delay in meeting the City's need for the appointment of new fire department officers would necessarily ensue.

Finally, the Court denies the motion to intervene on the ground that the applicants' rights were adequately represented by the existing parties and the intervenors. As stated hereinbefore, the final decree was agreed upon only after the most intensive negotiations, with all aspects of hiring and promotions within the Department being carefully weighed and reviewed, by officials of the City, the Civil Service Commission and the Department as well as by the 17 white captains who were permitted to intervene. The Court is satisfied that, under the circumstances of this case, no good reason has been shown to allow intervention; the rights of every fireman within the Department have been fully considered and protected. Cf. Afro American Patrolmens League v. Duck, 503 F.2d 294, 298 (6 Cir. 1974); United States v. Carroll County Board of Education, 427 F.2d 141, 142 (5 Cir. 1970).

Accordingly, the applicants' motion to intervene and all related motions are denied.

Dated at New Haven, Connecticut, this 3rd day of February, 1975.

Robert C. Zappano
United States District Judge

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TRANSCRIPT OF HEARING ON MOTION
TO INTERVENE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----x
FIREBIRD SOCIETY, et al., :
Plaintiffs, :
- versus - : Civil Action
MEMBERS OF THE BOARD OF FIRE : No. 15,876
COMMISSIONERS, et al., :
Defendants.
-----x

United States Court House
New Haven, Connecticut
October 1st, 1974

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

For the Plaintiffs:

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A p p e a r a n c e s (Continued):

. For the Defendants:

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W. PAUL FLYNN, Esq.
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THOMAS F. KEYES, JR., Esq.
Corporation Counsel
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New Haven, Connecticut

FRANK M. GRAZIOSO, Esq.
109 Church Street
New Haven, Connecticut

1 MR. FLYNN: If your Honor please, because of the
2 crowded condition of the court, may I ask the Court's indulgence
3 to let the people sit in the jury box?

4 THE COURT: Yes. I'd like to make arrangement so
5 everyone can be seated. What do we have, about --

6 MR. FLYNN: We have about a dozen, your Honor.

7 THE COURT: We could take at least two over here.
8 I have no objection to them sitting in the lawyers' section.

9 All right. In the matter of the Firebird Society
10 versus members of the Board of Fire Commissioners, 15,875, we
11 have certain motions scheduled for argument. Which one do you
12 want to argue first, Mr. Sagarin?

13 MR. SAGARIN: Your Honor, I think what's first pending
14 is there's an order to show cause as to why we ought not be
15 allowed to intervene, and I think that covers the motions
16 which are involved.

17 THE COURT: All right.

18 MR. SAGARIN: Your Honor, here we have -- here we have
19 moved to intervene in this action on behalf of a group known as
20 the Firefighter's Committee to Preserve Civil Service, Inc.,
21 which is a Connecticut nonprofit corporation, a charter purpose
22 of which is to preserve the merit promotion system for appoint-
23 ments and promotions within the municipal fire departments,
24 particularly in New Haven; and on behalf of certain named
25 firefighters in the City of New Haven who have not previously

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1 been represented in this lawsuit, who ran from the rank of
2 firefighter to the rank of battalion chief, on behalf of a
3 class that we purport to represent. In other words, we are seeking
4 to come in as class defendants and class crossclaimants.

5 The reason for seeking to intervene in this action
6 is because of an order entered by this Court on the 30th day
7 of August of this year, which, in effect, terminated the litiga-
8 tion which was then pending, although without judgment, by
9 setting a course of conduct to be followed by the parties, which
10 course of conduct affected the merit system of promotion in the
11 City of New Haven, by, in our belief, counteracting the
12 principle that no promotion should be made with any consideration
13 as to one's race.

14 We have sought to intervene in order to do several
15 things: One, to reopen or to ask the Court to set aside that
16 order. Two, if not -- if that order is not set aside, to
17 grant us permission to intervene to take an appeal from that
18 order; and three, to file a crossclaim such as that attached
19 to our moving papers, and to file an answer to the complaint
20 such as that attached to our moving papers.

21 It is our position that we are entitled, as a matter
22 of right pursuant to Rule 24 of the Federal Rules of Civil
23 Procedure, to intervene, and to that end, your Honor, I have a
24 memorandum which I would like to file with the Court. I have
25 hand delivered to the other parties in this case a copy of that

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1 memorandum, I'll give one to Mr. Keyes.

2 Rule 24, your Honor, provides in pertinent part that
3 upon timely application, any person claiming an interest
4 relating to the subject matter of the transaction is entitled to
5 intervene if he is situated that disposition of the action
6 may, as a practical matter, impair or impede his ability to
7 protect that interest, unless that interest has already been
8 adequately protected by the existing parties.

9 It is our position that we have a clearly recognized
10 interest in this action. It is exactly the same interest which
11 the intervenors in a case tried in this District and appealed
12 to the Second Circuit, case known as the Bridgeport Guardians
13 Society versus the Civil Service Commission of the City of
14 Bridgeport had. That is an interest in a system of appointments
15 to and promotions within the New Haven Fire Department which
16 are free from considerations of race, religion or creed. That
17 is an interest which the Second Circuit recognized in reversing
18 a quota promotion system in that case. It is also the same type
19 of interest which has been recognized in intervention applications
20 which were granted in whole or in part in other types of civil
21 rights actions. They were granted in cases cited in our brief
22 in whole or in part, particularly in United States versus the
23 Board of School Commissioners of Indianapolis, and in the United
24 States versus the School District of Omaha, in Oklahoma.

25 In those cases, the interventions were filed after

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1 a full and plenary hearing, and for that reason, the nature
2 of the intervention was limited to certain conditions. In one
3 case, it was limited to a condition that the intervenors at the
4 time adopt all of the discovery and all of the findings which had
5 been made to that -- up to that time.

6 In the other case, it was similarly limited, so that
7 the benefit of the preceding proceedings, which I emphasize in
8 both cases had been full and plenary proceedings, would not be
9 lost.

10 Here we have a situation where we don't come in seeking
11 to intervene following a full and plenary hearing. At no time
12 in this case has there ever been anything close to a trial on
13 the merits.

14 I have examined the record in the file in this case as
15 it existed in the Clerk's office on three occasions. I found
16 there limited amounts of discovery, which were interrogatories
17 filed by the plaintiffs, answers to those interrogatories, and
18 requests for production.

19 I also found in the case a sealed document which
20 bears on it: not to be opened, except by order of the Court,
21 relating to a chambers conference of December of '73, and, of
22 course, I can't advise the Court that I have direct knowledge as
23 to what is in that.

24 But in any event, the merit issues in this case which
25 are significant have never been heard, and particularly, this

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1 is a case which seeks, we believe, to violate the principle
2 of law set down by the Court of Appeals of the Second Circuit
3 in the Bridgeport Guardians case, and by the Congress of the
4 United States in the Equal Employment Opportunity Act, which, in
5 effect, prohibit quota remedies.

6 42 U.S.C., Section 2000E-2(h) provides that
7 notwithstanding any other provision of this subchapter, it shall
8 not be an unlawful employment practice for an employer to act
9 upon the results of a professionally developed test, provided
10 that test in its administration is not designed, intended or
11 used to discriminate because of race, color, religion, sex or
12 national origin.

13 In the order which this Court entered, the Court was
14 dealing with a test which we understand, and we'd be prepared
15 to prove was professionally designed and administered, and
16 was not designed, intended or used to discriminate.

17 Similarly, Section -- subsection (j) of that same
18 section prohibits anybody from required -- prohibits the requir-
19 ing of an employer, in this case, the City of New Haven, from
20 granting preferential treatment to any individual or any group
21 because of race, color, religion, sex or national origin of
22 such individual or group on account of imbalance which may
23 exist with respect to the total number or percentage of persons
24 of that national origin employed by that employer, or of the
25 percentage of persons of such race, color, religion, sex or

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1 national origin in the community, state, section or other area in
2 which the available work force is drawn from.

3 That is exactly what the plaintiffs in this action
4 sought to have this Court do, and in our view, is what this
5 Court did in entering its order.

6 I have, your Honor -- I am prepared to put on the
7 following evidence if evidence is appropriate at this time,
8 and there's some question in mind as to whether we first have
9 to be allowed to intervene, and then we can put on evidence
10 to set aside the order, or whether we can put on evidence
11 indicating what we would do if we were allowed to intervene.

12 THE COURT: Why don't you give me an offer of proof?

13 MR. SAGARIN: All right. Your Honor, first, we would
14 offer to identify the parties who seek to intervene, and to that
15 end, I would call Battalion Chiefs John Riordan and Albert
16 Cirletti, as well as some of the other named plaintiffs, and
17 particularly, one named Donald Disera, who ranks 29th on the
18 Court's list of lieutenants list -- of the list attached to the
19 Court's order, to indicate the following: Messrs. Riordan
20 and Cirletti would testify that they are principal organizing
21 officers of the corporate intervenor and would testify to the
22 purposes of that corporate intervenor which I previously
23 identified to the Court.

24 They would also testify that they were not represented,
25 and none of the members of the group who are identified were

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1 represented at any point along the proceedings by any person
2 who was in the proceedings.

3 They would further represent that their understanding
4 was that what was to happen as a result of this lawsuit was
5 that a new competitive exam would be given, a properly
6 validated exam would be given, and that the results of that
7 examination would be -- would come into effect on a nondiscrimi-
8 natory basis, and by discriminatory, I mean neither prominority
9 nor antimajority.

10 They would also testify that the effect of the order
11 of this Court is to seriously affect adversely the morale of
12 the group which they seek to represent, and particularly the
13 firefighters of the City of New Haven.

14 They would further testify that it would be extremely
15 difficult to have confidence in the orders of a superior officer
16 who was appointed not on the basis of merit competition,
17 because there would be doubts not only as to how he got there
18 and some lingering resentment as to the manner in which one was
19 appointed if there was a racial consideration in that appoint-
20 ment, but also there would be substantial doubts as to his
21 ability to give the proper commands in extremely dangerous
22 situations.

23 Mr. Disera would testify that he is number 29 on the
24 list, and that on his information and belief, he is entitled to
25 a higher rank on that list than number 29, but is being prevented

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1 from obtaining any of the first 28 appointments referred to
2 in the Court's order, not because he failed to do as well on
3 the exam as some of those above him, but for reasons and
4 considerations extraneous to merit, but reflective of racial
5 origin.

6 I would call Mr. Grazioso, who is originally named a
7 defendant in this action, to produce the history of the
8 compilation of that list, and I have subpoenaed him to bring
9 with him all records which he had. I would ask him to testify
10 as to all of his knowledge as to how the list was constructed
11 and how the first 28 were arrived at on the list attached to
12 the Court's order.

13 It is my understanding that that testimony would
14 reflect a series of heretofore undisclosed understandings
15 between the then parties to the case and this Court as to who
16 should be appointed and what the list should contain, particularly
17 that the list should contain a minimum number of minority rep --
18 I shouldn't say a minimum -- a particular number of minority
19 representatives, regardless of how, in fact, they did on that
20 particular exam, and regardless, more significantly, of how they
21 related to others who took that exam.

22 THE COURT: You are not implying for one minute that
23 these names were placed on the list in an arbitrary, capricious
24 manner, are you?

25 MR. SAGARIN: I think that, your Honor -- that the

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1 information which we have, which I would seek to explore, is
2 that -- and this is probably one of the reasons we ought to be
3 allowed to intervene, to clear up any misapprehension if this is
4 so -- is that the examination results were gerrymandered to
5 achieve preordained results.

6 THE COURT: That's a conclusion, but what -- that's
7 a conclusory statement.

8 MR. SAGARIN: I have subpoenaed --

9 THE COURT: But what do you mean?

10 MR. SAGARIN: What I mean is that while we have a --
11 if examination of the Court's file indicates there is an
12 initial letter to the Court from Mr. Grazioso containing certain
13 names of persons who passed the competitive examination, that
14 is not the list which finally is attached or the order of the
15 list which is finally attached to the Court's order. Between
16 that first letter and the final order of the Court, something
17 happened in determining what order people should be placed on
18 the list in what examination procedure -- for the rank of
19 lieutenant.

20 THE COURT: You are not implying that there's any
21 doubt at all in your mind as to how exactly what happened here?

22 MR. SAGARIN: No. I think there is doubt in my mind,
23 your Honor, as exactly what happened. I have spoken with some
24 of the counsel who were involved, and I have spoken with Mr.
25 Grazioso, and the indication which I got is that weightings were

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1 given -- in effect -- is that persons were slotted into places
2 which they otherwise did not -- were not entitled to obtain,
3 which displaced other persons who were entitled to those
4 positions.

5 THE COURT: Well, there's no question in your mind,
6 however, that aside from the slotting in of the blacks, that no
7 whites were gerrymandered?

8 MR. SAGARIN: No. I don't -- no, and I'm not raising
9 that issue. I don't have reason to believe that there was
10 that type of gerrymandering among the nonminorities, but I do
11 believe that there was gerrymandering among blacks, as opposed
12 to whites, on the exam, and that's the issue that we're seeking
13 to raise here, is that it is an appropriate thing which the
14 Court can or should do in the absence of a full hearing of a
15 group of parties who are affected.

16 Now, one of the things we -- in a motion to intervene --

17 THE COURT: Moreover, let me ask you this: You say
18 that there were seven displaced?

19 MR. SAGARIN: Yes. Well, six or seven displaced,
20 that's correct.

21 THE COURT: You do know that the order, if my under-
22 standing is correct, is in existence until 28 are appointed?

23 MR. SAGARIN: That's correct. But it is --

24 THE COURT: In other words, it was anticipated that 21
25 would be appointed, and the reason that we went to 28 is to take

1 care of the displaced seven.

2 MR. SAGARIN: I understand that. Then the question
3 has to be explored, in addition, aside from anything else, if
4 that's even appropriate -- an appropriate remedy, because we
5 are at that point making considerations of promotion based on
6 racial considerations, which we claim is totally prohibitive.
7 This is a different question.

8 THE COURT: Just a moment. All I'm saying is that
9 that question you are raising, I'll have to hear the parties, but
10 is there any question in your mind that the seven that are
11 displaced are not going to be deprived of lieutenancy?

12 MR. SAGARIN: What's in my mind, your Honor, is that
13 of those 28 -- it's not at all clear to me, and, in fact, I think
14 the proof would show otherwise -- that the exam results did not
15 come out with the nonslotted-in persons within the ranks of 21
16 to 28; that there are other persons, even beyond the
17 rank of 28, who, if there are going to be 28 appointments, are
18 entitled to those promotions.

19 THE COURT: But what if the list ran out at 21?

20 MR. SAGARIN: If the list ran out at 21, then all of
21 the persons who had meritoriously completed for the examination
22 would be appointed, and that if an additional seven places
23 came to be needed, then they would be filled by the competitive
24 merit examination, not based on racial consideration.

25 We have not been adequately represented in this action,

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1 which is a factor to be considered in whether or not we're
2 entitled to intervene, because: A, the City in this action had
3 a direct pecuniary interest in reaching a settlement short of
4 trial which would avoid the City from being subjected to
5 a claimed million dollar damage suit. I have searched the files
6 and I have advised Mr. Flynn that nothing in the files which I
7 can find reflects a formal intervention on his part. I'm
8 advised, and I have no reason to disbelieve, that at some
9 point along the way some either formal or informal procedure
10 was adopted pursuant to which he represented to the Court that
11 he was protecting the interests of certain named individuals
12 who had at that point a direct and immediate interest in
13 lifting an injunction, which prevented those individuals either
14 from being appointed to the police force or from being promoted
15 to the rank of captain.

16 Those individuals have a direct interest in lifting
17 an injunction regardless of an overall result, and thus our
18 interest is not adequately represented. Thus, no one adequately
19 represented our interests here. The final category of inter-
20 vention is one of timeliness. And that raises an issue here,
21 because we come to the Court after the Court has issued an order.

22 We have pointed out in our brief that applications to
23 intervene after a judgment are unusual, but not unheard of. And
24 not unprecedented. And those are cases which I previously talked
25 to the Court about in which applications were made by -- for

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example, in one case, a citizens committee to protect the
schools in a particular city which was the subject of a
desegregation suit, and in that situation the courts allowed
limited intervention for particular purposes: in one case to
take appeal, in one case to continue with the proceedings
towards remedy, in one case to adopt certain -- to go forward
adopting what had gone on before.

But in all of those cases, even though a judgment had
been entered, intervention of some sort was allowed.

Here we don't have a judgment which was entered, and
here primarily we don't have a judgment which was entered upon
a hearing in open court.

Were any of these individuals whom we seek to
represent to have gone down to the Clerk's office here, they
would have found a sealed order, they would have found no
transcripts on file of the numerous chambers conferences which
I understood happened here, which we would offer to prove
happened, where all of the decisions relating to the outcome of
this suit were made. There was no opportunity to be heard,
and that is what we request to have, is an opportunity to be
heard, and the way we seek to do it is to intervene in this
action.

I suppose that one way this action -- these issues
could be raised to this Court is for this very same group of
intervenors to file a separate action here against the City to

1 determine why it is not: A, following the mandated Equal
2 Employment Opportunity Act; B, following the mandated charter
3 of the City of New Haven; C, following the collective bargaining
4 agreement and; D, following its own civil service regulations.

5 At that point, having not intervened here, it could
6 not be met with a claim of res judicata because we were not
7 parties.

8 I think the more sensible way to handle it is to
9 come in the action which is already pending and say: "Look it,
10 there's a group of people who are entitled to be heard, they
11 have a major interest in being heard, and they should -- before
12 their significant rights are affected, they should be heard, and
13 if necessary, allowed to have this case heard on the merits."

14 Although it is commonplace in federal courts, or in
15 courts throughout the country, for many significant things to take
16 place in chambers where lawyers are involved, where a matter
17 of substantial public interest is involved, we think that it
18 should -- everything should be on the record. We find it hard to
19 go back, otherwise, to find out what happened, how were our
20 rights affected, and we think that this point is an appropriate
21 time before there's been any adjudication on the merits when,
22 in effect, what we have is a proposed settlement of the case which
23 the Court adopted without a consideration, in our view, of all
24 the parties who were concerned, and we'd ask to intervene to allow
25 us to raise the defenses that we have sought to raise in the

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1 answer to the complaint and the crosscomplaint against the City,
2 which we filed with our order to show cause.

3 THE COURT: Let me ask you this. Just assume that you
4 were in this series of conferences held with the Court which
5 extended almost a year, and I believe on 23 occasions, sometime
6 late into the evening, and you represented 23 or 24 of the
7 people you now represent, and there was a fair and reasonable
8 agreement in your mind. The very next thing could happen is
9 that another group could come in and say: "Well, I wasn't in
10 chambers," how would you ever settle a lawsuit of this magnitude
11 if 650 people are meeting in a room?

12 MR. SAGARIN: There's a very simple answer to that, your
13 Honor, and that's what we purport to do here. We have sought to
14 intervene not only on behalf of ourselves, but on a whole class
15 that we seek to represent, which are the nonminority firefighters
16 of the various ranks in the City of New Haven.

17 The federal rules provide for --

18 THE COURT: They all have different standing.

19 MR. SAGARIN: No, they have a central standing. What
20 we have where we have a potential class, and at first blush, a
21 legitimate class, we have rules -- the Federal Rules of Civil
22 Procedure, which, as a matter of class, relate not only to the
23 plaintiffs who sought to bring the class action, but to
24 defendants or to intervenors, and one of the things that's
25 easily done, particularly where you have a readily identifiable

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1 class, not in hundreds or millions or thousands, but in several
2 hundred people, is to send out notices as to what the claims
3 of class representation are, to give those classes an opportunity
4 to say: "I join the class intervenors," or, "I refrain from
5 joining the class intervenors." They can come in; at that
6 point they are represented. Their interests are represented.

7 If there are divergent interests, they come in as well.
8 If an individual wants to represent himself, he is allowed to
9 come in. And in this type of action where you have a class
10 action brought on behalf of a broad group of people, namely:
11 blacks and persons of Hispanic origin, hardly identical, hardly
12 homogeneous as to education and as to cultural background; we
13 have a more significant need, which is to identify a class
14 of people who will be bound by the judgment.

15 That was done in the Guardians case. That was done
16 when Judge Newman made a finding saying that the intervenors
17 adequately represented the whole class of persons similarly
18 situated to them.

19 We don't have that situation here, and that's what
20 we're seeking to do; we're seeking to come in to avoid that very
21 problem. To avoid the problem of an individual who is on the
22 list from going to the state court and saying: "Hey, I should
23 be higher on the list, I should be appointed. I was never party
24 to that litigation."

25 If we are going to reach a fair and reasonable settlement,

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1 the persons affected by that settlement ought to be consulted.
2 That's why we have the class procedures in the federal court,
3 and I think that's what should have been done here, and I think
4 that's what we're seeking to get.

5 THE COURT: Well, I'll have some other questions, but
6 perhaps I'll hear from counsel who would like to answer first.

7 MR. ROSEN: Your Honor, on behalf of the plaintiffs,
8 may I initially request that myself and Michael Koskoff be
9 permitted to divide our remarks to the Court? We each have a
10 couple of points that we wanted to make.

11 THE COURT: All right.

12 MR. ROSEN: Initially, a lot of what counsel has
13 said has focused on the distinction between a trial on the merits
14 and a case which has been settled, and as to that, I only need
15 to refer the Court to the recent case of Jordan against Fusari,
16 in which the Second Circuit Court of Appeals specifically
17 commented on the practice of settling important pieces of litiga-
18 tion, including class litigation, and commended that practice
19 as something which was within the proper function of a Court
20 and was a practice to be encouraged.

21 I'm going to talk briefly about the problem of
22 timeliness, because it seems to us that the application here is
23 untimely and ought to be denied for that reason. This action
24 comes -- the motion to intervene comes after judgment. I don't
25 know that the organization that Mr. Sagarin represents even

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1 existed during the pendency of this lawsuit; so far as I know,
2 it was formed after the Court's order, which is a final order,
3 was entered, for the purpose of attempting to set aside that
4 final order.

5 Mr. Sagarin has pointed out several cases, or two
6 cases, at any rate, in which intervention is permitted after a
7 judgment. In all those cases, the parties have had to take
8 the lawsuit as it stood at the point at which they intervened,
9 they have had to accept everything which has happened so far,
10 they have not been able to go in and set aside anything. In
11 cases in which there is litigation and an appeal was the
12 appropriate next step after a trial, sometimes parties have
13 been permitted to intervene in order to appeal.

14 Here, when there's a -- a case has been settled,
15 there's no appeal, and that was part of the Court's order,
16 something that all the parties consented to.

17 So cases in which parties intervene and accept
18 everything beforehand is applied in this case to indicate that
19 a party, even were they to intervene, would be able to intervene
20 only in order to deal with issues which have not already been
21 finally and conclusively dealt with, and those issues are really
22 not the issues that Mr. Sagarin is interested in at all, they're
23 sort of odds and loose ends of the lawsuit.

24 With respect to whether this order is -- whether this
25 application is timely, it seems to me the crucial factor -- a

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1 crucial fact is that notice was given to everybody who wants to
2 intervene, and every other member of the fire department
3 immediately upon the filing of this lawsuit.

4 At the time the lawsuit was filed, your Honor, on the
5 date it was filed, issued a temporary restraining order dated
6 October 5th, 1973. Pursuant to agreement of the parties, and
7 as I recall, at the suggestion of the Court, a notice was posted
8 in every firehouse in the City of New Haven. And that notice
9 read as follows: "A lawsuit has been filed against the
10 Department charging racial discrimination in hiring and promo-
11 tions. The plaintiffs have obtained a temporary order from
12 United States District Judge Robert C. Zampano; a copy of that
13 order and of the relief sought by the plaintiffs is available
14 at each firehouse. Any member of the Department wishing to
15 intervene in this lawsuit are entitled to intervene, and should
16 see counsel immediately in order to be present at a pretrial
17 hearing in the District Court at 2:00 p.m., Monday, October 15th,
18 1973. This notice is distributed at the request of all the
19 parties to the lawsuit in order to give notice to all the
20 members of the Department."

21 Now, appended to that was a copy of the Court's
22 temporary restraining order, and also appended to that was a
23 copy of that portion of the complaint in which the plaintiffs
24 set forth the relief that we were asking for, and part of that
25 relief was a revised system for promotions under which qualified

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1 applicants are to be selected only from the class of plaintiffs
2 and the plaintiffs' class was the class of all the minority group
3 members of the Department, as openings arise until they are
4 represented as officers in the department in proportion to their
5 number among residents of the City of New Haven, or a revised
6 system of promotions under which qualified applicants are to be
7 promoted alternately, one white and one minority from the class
8 of plaintiffs as openings arise until they were represented as
9 officers in the New Haven Fire Department in proportion to their
10 number among residents of the City of New Haven.

11 So that on October 5th, or shortly thereafter, full
12 notice was given to everyone in the Department as to what the
13 plaintiffs were seeking, that they were seeking a system of
14 promotions in which promotions would be made with consideration
15 given to race, and everybody in the Department was aware or
16 had an opportunity to be aware of that.

17 Later, the Court issued an order, a consent order on
18 December 5th, 1973, in which the Court said, among other things,
19 that there would not even be an examination for captain or
20 promotions to captain until a reasonable number of blacks were in
21 a position to be promoted to captain from the rank of lieutenant.

22 So, once again, there was adequate notice to people
23 that there is more than simply neutral examinations that were
24 being contemplated by the parties, and more importantly, perhaps,
25 being sought by the plaintiffs.

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1 In short, at this point, after the judgment, after
2 the litigation is terminated, there's no special or extraordinary
3 reason to permit a group or individuals to intervene who had
4 an opportunity to intervene during the entire course of the
5 lawsuit, and who chose not to intervene.

6 AS a citation, one of many, there's a case called
7 United States against Blue Chip Stamp Company, 272 Federal
8 Supplement 432, in which the District Court refused intervention
9 after a consent decree in an antitrust case. The special
10 interest of that case was that it was affirmed by the United
11 States Supreme Court, 289 U.S. 580, rehearing denied, 390
12 U.S. 975. And it was plainly upheld in that case that people
13 who might or might not have an interest in intervening, had
14 they come in at the beginning or the middle of the lawsuit, or even
15 near the end, could not come in after a certain point, and the
16 point that the Court picked in that case was the end of the
17 lawsuit.

18 I think Mr. Koskoff is going to address some other
19 points.

20 MR. KOSKOFF: If your Honor please, Mr. Sagarin
21 addressed certain remarks to -- with regard to the adequacy of
22 representation of these interests so far, and I think that it's --
23 initially, we should point out that the notice that was given
24 in the inception of this lawsuit was intended to give all of
25 those people, who felt that they had an interest to protect,

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1 an opportunity to come in and to be heard and to have their
2 representation and to have a day in court.

3 In fact, some defendants, some members of the fire
4 department did come in and intervene, and Mr. Flynn came in on
5 behalf of a group of captains who were on an existing captains
6 list and who felt that they had an interest that they wanted to
7 protect.

8 The City at the same time represented its interest,
9 which included the enforcement of the civil service regulations,
10 and certainly if anyone had an interest in making sure that
11 the civil service was maintained in a fair manner, the City of
12 New Haven had that interest, and represented that interest.
13 The City was there, and Mr. Flynn was there.

14 Now, Mr. Sagarin seeks to intervene on behalf of two
15 types of organizations. One is this corporation that was formed
16 for the purpose of intervening, so far as we can tell, and just
17 with regard to that corporation, its goals, unlike in the
18 Norwalk CORE case, which is cited by Mr. Sagarin, the goals of
19 this organization to preserve the civil service are not unique
20 to that organization, the plaintiffs, it should be stated, also
21 want to preserve the civil service and want to preserve the
22 merit system and feel that their lawsuit has been in that
23 interest, in the interest of preserving a fair merit system in
24 the City of New Haven.

25 So that the interests of the defendants in preserving

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1 the civil service is not unique. But more importantly, it seems
2 that that corporation's structure is, in a sense, a smoke screen
3 or a cloud to cover what is really a diverse group of individuals
4 from within the Department of Fire Services, all of whom having
5 individual interests in the outcome of the case.

6 For example, there's an individual who is number one on
7 the Lieutenants list who has sought to intervene and have Mr.
8 Sagarin represent him, and also an individual who is number 29
9 on the list. So if there was ever a conflict between the Paul
10 Flynn's representation of these captains who are on the list
11 and the men who are now seeking to intervene, Mr. Sagarin will have
12 that same conflict simply within his own representation. He
13 has people with different interests, one of whom -- one of
14 whose interest might be to become immediately appointed to the
15 position of lieutenant, another might be to have the list thrown
16 out entirely and to have a whole new list drawn up.

17 So that to say that the interest has not as yet been
18 adequately represented, and then to say that Mr. Sagarin would,
19 in fact, adequately represent those interests, it seems to me to
20 be something of an inconsistent position.

21 As I say, the list is composed of people who are on
22 both the lieutenants list, people who are presently battalion
23 chiefs, people or captains who are not on the captains list
24 that Mr. Flynn represented, and people who are presently privates
25 in the Department.

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1 Now, aside from that, there is the -- the question
2 is: what would these individuals be intervening for? Mr.
3 Sagarin suggests that they might intervene to appeal.

4 Well, that certainly isn't a viable alternative. Since
5 the order itself was conditioned upon the agreement of all the
6 parties not to appeal. So that, in essence, it would be saying
7 that the interests that Mr. Sagarin would represent would have
8 an opportunity to appeal, but the interests that the plaintiff
9 represent would not have that opportunity to appeal, or at least
10 that the order that was entered was not one that was entered
11 without waiving that right to appeal.

12 There was a question of a crossclaim, there's a
13 question of intervening and of reopening. In the end, I think
14 what the purpose, the real purpose of intervening is to simply
15 to reopen and to undo all of the painstaking labor and time and
16 effort that has been invested by all parties over a period of
17 almost a year in order to resolve this lawsuit in a way which
18 would be fair to all parties; and in view of the early notice
19 that has been given to this Department, it seems to me that
20 this is just manifestly unfair, not only to the plaintiffs, but
21 to all of the other people who are involved.

22 THE COURT: Well, moreover, certainly more than just
23 the parties, over the course of this year the highest officials
24 of this City were consulted, union officials were consulted,
25 experts were indirectly consulted, lawyers talked to experts

27

1 about that exam and reported back to the Court what the
2 experts' opinions would be. Certainly, it wasn't a little
3 secretive group of people who got together to settle this
4 lawsuit. This had input from many, many other people who on
5 their face, in effect, represented masses of the people who
6 would have been affected. Individuals members of the Board of
7 Fire Commissioners had input, and expert lawyers, lawyers that
8 have an expertise in this field.

9 When the parties first got together, the spectrum
10 was such an extreme that it just seemed incredible that the
11 parties would ever reach an agreement, and it took a lot.
12 more than just the parties to this lawsuit for an agreement to
13 be reached.

14 But let me ask you this: You mentioned the prejudice,
15 and, of course, that always interests a Court, when somebody
16 accuses a Court of issuing an order which prejudices someone.

17 Now, the seven that were displaced are -- except
18 for -- for casue, I suppose -- but will be appointed lieutenants
19 because the list -- the Court order doesn't run out until 28 are
20 appointed, is that correct? Is that your understanding?

21 MR. KOSKOFF: Our understanding was this, if your
22 Honor please, that within the life of the -- well, first of all,
23 I think we should go back a bit to point out that -- and point out
24 to the Court -- that there was no -- that the gentlemen who are
25 on the lieutenants exam weren't just suddenly on a lieutenants --

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1 weren't just suddenly on a lieutenants list, this is a list
2 that was permitted to be drawn by the plaintiffs. In other
3 words, the plaintiffs, by yielding on their temporary
4 injunction, permitted an examination to be given, and permitted
5 this list to be compiled. It wasn't just an ordinary Civil
6 Service examination that was given in the City of New Haven.
7 It was done -- given -- when the plaintiffs had already yielded
8 a right in order to permit this exam to be given in order to
9 permit promotions to be made to the rank of lieutenant without
10 going through two years of litigation, such as the Guardians
11 had, before there was ever anybody ever appointed, so that
12 was the first --

13 THE COURT: And, in fact, there was a clear violation
14 of the Court order at one time?

15 MR. KOSKOFF: That's correct. This examination could
16 not have been given were it not for an agreement by the plaintiffs
17 to permit the examination to be given.

18 THE COURT: Over and above that, the Court issued an
19 order that promotions should not be made while this lawsuit was
20 pending, and there was, as I understand it and recollect, a
21 direct, willful -- I better not say willful -- but certainly
22 a direct violation of that order which could have subjected the
23 people who were made, I believe, captains or lieutenants, to be
24 reduced in rank, and somebody could have been held in contempt.

25 We had long meetings over whether that would be pushed,

1 but in a spirit of -- that we were trying to attempt to bring
2 this very delicate, sensitive lawsuit to an end, we overlooked
3 that, but as a matter of fact, there were promotions made
4 during the pendency of this lawsuit in direct violation of this
5 Court order.

6 MR. KOSKOFF: That is also correct, your Honor, and
7 the plaintiff at that time also did not seek the contempt
8 citations that they felt they could have had at that time in
9 the interest, again of keeping this Department together.

10 But when the exam was given, in order to permit people
11 to be promoted and in order to permit them to compile a list,
12 there was a -- represented to the Court and to plaintiffs
13 and to all of the parties, and this was exhaustively researched,
14 as to how many individuals could be expected -- if we would allow
15 a list to be made -- how many individuals would be taken from
16 that list to be promoted to lieutenant, and after researching
17 it with the Civil Service Commission and with the Board of Fire
18 Commissioners and with the Chief and with a number of other
19 individuals, it was determined that it would be expected that
20 21 individuals would be appointed during the length of that list.

21 So an exam was given and the list was compiled, and
22 when it came to the remedies which the plaintiff had been seeking
23 for past discriminatory practices of the Civil Service Commission
24 and the City and the other defendants, although no one has
25 claimed that the individuals defendants or those who are seeking

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1 to intervene or in any way involved in the prejudicial treat-
2 ment -- I should make that clear -- but that the plaintiffs
3 were entitled to some sort of a remedy for past discrimination,
4 and that the City was in need of minority officers for the
5 supervision of men and material and human lives in minority
6 neighborhoods in this City, and when it came time for adding
7 the names of the minorities to the list to be appointed, I
8 believe it was the City that was very adamant about this, and
9 Mr. Flynn was very adamant about it, and the Court was very
10 adamant about it. Although, to be perfectly honest, the
11 plaintiffs weren't as adamant about the fact that no white,
12 nonminority officers were to be displaced as a result of the
13 fact that minority officers were going to be appointed, and
14 the Court took great care in compiling the list to add another
15 provision to the order, which was that rather than 21 being
16 appointed, that instead, 28 would be appointed. So that no
17 one would be displaced from a lieutenant's position.

18 So that I think that, you know, although I'm not
19 sure whether this was made clear prior to -- actually this
20 moment, and perhaps in some ways it should have been, I think
21 it's a very important consideration in determining whether
22 anyone, in fact, has been prejudiced or in any way severely
23 prejudiced by the actions of the Court.

24 I think it should also be pointed out that great care
25 was taken with regard to the scores on those examinations. That

1 it was determined after one list was presented that -- I think
2 on one occasion the City found that there was some error in
3 mathematics, with regard to both the whites and the minorities.
4 I think -- as I recall, we had them in both instances, that
5 there were errors in mathematics which resulted in people not
6 being -- in shifts on positions on the list, but the Court
7 and the City were -- took great care to make sure that the final
8 list was a correct list, that there was no gerrymandering of
9 positions, and that no one was placed out of order that they
10 would have been in, and that the figures, the evaluations and
11 the scores were all put in correctly. And I think that this is
12 another very important issue as to whether or not anyone has
13 been prejudiced by the extraordinary and wonderful manner in which
14 this case has been handled by all parties.

15 THE COURT: Let me ask you this, Mr. Koskoff: From
16 your point of view, and I will ask this question to the other
17 attorneys, if I granted full relief to Mr. Sagarin and his
18 clients and undid everything that was done, is it correct to
19 say that all the promotions made in the past year would have
20 to be set aside? The exam would have to be set aside, no exam will
21 be given for lieutenant, that the ten white trainees that should
22 not have been put into the training center, but which we allowed
23 to go in, would be taken off the job, or the captains that were
24 made would have to become lieutenants, and to put this lawsuit
25 back to where it was, back in October, would also reinstate your

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1 right to make the demands that you did, which, as I recollect,
2 were much, much more severe than what you finally obtained in
3 the final analysis? I recall that if for any reason this
4 agreement and Court order was not finalized, that that would
5 permit the entire range of remedies you sought to be opened
6 again, including setting aside that examination.

7 MR. KOSKOFF: Well, that's correct, your Honor. In
8 each stage of the proceedings, any rights that we had as a
9 result of our initial injunction were always waived in exchange
10 for further action that was to be taken, and anticipated action,
11 and we would insist if the lawsuit be reopened, that we brought
12 back to our full range of rights and opportunities in this case.
13 I would also think that before any promotions could be made
14 there would have to be at least a full trial, and if the
15 Guardians case is any example, at least one appeal, in the
16 Guardians case there were two appeals, I think that before
17 promotions would be made to any rank, including lieutenant or
18 captain, I would be surprised if anything would occur within --
19 certainly within a year, and probably within 18 months. So I
20 think I would be entitled --

21 THE COURT: How do you distinguish the intervenors'
22 use of the Guardians case as precedent for favorable action on
23 their motion today?

24 MR. KOSKOFF: Well, first of all, the use of the
25 Guardians case was simply inappropriate, for several reasons.

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1 First of all, the Guardians case was not a Title 7 case, it was
2 a 1983 case. Second of all, the Guardians case didn't stand
3 for the proposition that Mr. Sagarin cited it for, which is
4 that -- cited for the proposition that quotas are, per se,
5 illegal; and, as a matter of fact, the Guardians case upheld
6 quotas as they applied to the hiring rank, and it only overturned
7 them in their promotional rank, because the plaintiffs in that
8 case had not been able to establish that there was a
9 discriminatory exam, and in this case that -- although I don't
10 think we should go into the scores, the relative scores and the
11 like here, the plaintiffs represented and felt that they had a
12 very good opportunity to prove that there were discriminatory
13 examinations that were being used in the sense -- discriminatory
14 in the sense that they are deemed to be discriminatory under
15 Title 7. So that the Guardians case is just not -- just doesn't
16 stand for the propositions that it was cited for, and as a
17 matter of fact, even if it had, it doesn't seem to me that the --
18 that a case which has been ultimately brought to judgment through
19 a settlement couldn't do what a Court might not do in one sense
20 on a judgment, even though I think in this case, I think there
21 was just -- clear that it was an entirely different kind of a
22 case, that there was infinitely more of a history in New Haven of
23 the use of these kind of examinations that have ultimately been
24 found by Courts all around the country to be discriminatory.

25 And promotional relief has been awarded in other

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1 instances, the San Francisco Fire Department was awarded
2 promotional relief, there was promotional relief awarded in
3 Chance versus the Board of Commissioners in New York. There
4 was promotional relief awarded in various parts of the country
5 in various types of cases, so it's just not such an unusual kind
6 of relief. I think --

7 THE COURT: Do you have a brief on this?

8 MR. KOSKOFF: We don't have a brief at the present
9 time. We would be able to get one in within just a few days.

10 THE COURT: Yes. Mr. Sagarin filed one today, and I
11 think we ought to have a reply to that.

12 All right. I'll hear --

13 MR. KOSKOFF: Thank you, your Honor.

14 THE COURT: -- Mr. Flynn, Mr. Keyes, Mr. Grazioso.

15 I know you have a presentation, Mr. Flynn. I'll
16 certainly listen to it all.

17 MR. FLYNN: I'll be very brief, your Honor.

18 THE COURT: But you were, of course, quite vocal and
19 played an extremely important part in this final order. Do
20 you feel we have prejudiced anyone here?

21 MR. FLYNN: Are you asking me personally, or as counsel?

22 THE COURT: As an attorney who was part of this.

23 MR. FLYNN: I would have to answer it with circumspec-
24 tion, your Honor, and the reason will be apparent in a moment.

25 THE COURT: Be circumspect a little bit.

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1 MR. FLYNN: I was served with the order to show cause
2 on behalf of the parties for whom I represented to the Court
3 I was intervening. I think I fairly represent to the Court
4 that it started out as 17 men who were on a captains list. We
5 were subsequently advised that there had been another captains
6 list from which there had been an appointment and not been an
7 assignment.

8 Your Honor has mentioned the allegations of an act
9 of contempt. That involved two people from the lieutenants
10 list that preceded the examination. There were 18 members in
11 the training school at the fire station who were, as I recall
12 it -- the first time that I attended a meeting, they were about
13 to conclude their fire training and to be assigned to various
14 stations, or they were at various fire stations, and they were
15 going to go into fire training. There was question as to
16 whether or not they could go.

17 And I think I would have to answer the question, at
18 least as I viewed it, since all of the people whose interests
19 I represented -- there were 10 others who were appointed and
20 who were to go into the fire training school. Since all of
21 their interests were protected, I felt that the order was fair.

22 Now, I must tell your Honor that in subsequent
23 proceedings I did appear before a group of firefighters, and
24 if I wasn't supposed to, I want to confess to the Court that
25 I've already read publicly the in-camera order of September 5,

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1 1973 to the people who were present, and I did the same thing
2 again Sunday morning when I met with a specific group.

3 I think the only way I can answer now, your Honor, is
4 to say that I have -- because of some, let's say, reasons that
5 the individuals involved feel are just, from their point of
6 view, and because they felt -- some felt -- that the orders
7 of the Court were unfair insofar as they were concerned, I felt
8 it incumbent upon me to inquire specifically of the individuals
9 whose interested I attempted to protect, whether or not they
10 wished me to continue to protect their interest.

11 And I did that because I had the feeling that they
12 might have felt that I did something that was in derogation of
13 their interest, and I wanted them to have a specific opportunity
14 to give me direction.

15 When I was served with this order, I was en route to
16 northern New England for a few days just to sit in the woods,
17 frankly. I came back on Friday and contacted representatives
18 of the fire service who could be in touch with these people.
19 I met with some Sunday morning. I have talked with a few
20 telephonically since I finished talking with them on Sunday
21 morning, and a number of the people whose interests I did
22 represent through this order have asked me expressly to no longer
23 represent them. But not everyone, I must confess to your
24 Honor, that I would feel obliged --

25 THE COURT: Well, right now the lawsuit is over.

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1 MR. FLYNN: Well, I understand that.

2 THE COURT: It's terminated.

3 MR. FLYNN: I think they asked me not to represent
4 their interests with respect to the order to show cause. But
5 I specifically told a limited number of them what the possibilities
6 of the order were, and they've asked for an opportunity to consider
7 it and come back to me, and it would seem to me that since I
8 represented those interests, I'm duty bound to speak for the
9 order insofar as it protected the interests of people whose
10 interests is still to be protected, and I advised those people,
11 that I could reach, of that fact.

12 I do believe that I first became aware of this
13 application by virtue of the posting order in the fire stations,
14 and I was specifically asked in the first instance to protect
15 the interests of the 17 men who were captains. It only
16 developed thereafter there were other people that I was unaware
17 of and that everybody else was unaware of, whose interests
18 would also be affected, and I attempted to protect those
19 interests thereafter.

20 Since the order protected those interests, in other
21 words, kept them on the job or gave them the promotions which
22 they felt they had rightfully earned, I would have to say that
23 I don't think their interests were prejudiced. But they may
24 have a different feeling on that, your Honor, and for that
25 reason I guess I'm really -- indicate I'm present and nothing more

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1 with respect to this order until I can get an affirmative
2 statement with respect to everyone. In other words, I have had
3 telephone messages to my office. I haven't talked to the
4 individuals, and I will make it a point to do that. But I
5 must confess that I did agree and acquiesce not to appeal, my
6 clients' interests were protected.

7 THE COURT: Yes, but in the meantime, while these
8 proceedings were under way, a great many things occurred in
9 reliance, promotions were made, the exam was given, trainees
10 went into the Department.

11 MR. FLYNN: 18 men went into the service, 7 captains
12 were made, 2 lieutenants were permitted to retain themselves
13 in that position, and a representation was made at the end that
14 all of the rest of the captains could be advanced in accordance
15 with their opportunity, and the 10 men who had been appointed
16 and were standing at the doorway in the fire training school
17 could go, and that they would be counted a part of the appointive
18 proceedings after the hiring practice, that's absolutely true,
19 no question.

20 THE COURT: Now, since August 30th, has any other
21 action been taken with respect to areas that were opened up
22 because I released some of the injunctive --

23 MR. FLYNN: Not to my knowledge. You mean have any
24 appointments been made? No, sir, not to my knowledge. If the --
25 I think that, as I recall, the conversation, your Honor, in the

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1 hiring procedure a list was obtained of people to apply for
2 employment to the fire service, but that examination for that
3 appointment had not yet been administered, it was my understand-
4 ing that the 10 men who had been appointed would be permitted
5 to go to fire training school, but as of today, I don't believe
6 anything has been done by the municipality with respect to
7 those individuals.

8 THE COURT: Mr. Keyes?

9 MR. KEYES: Your Honor, I think every point has been
10 gone into by Mr. Sagarin, Mr. Rosen, Mr. Koskoff and Mr. Flynn,
11 and by your Honor answering questions. I don't have anything
12 to add, but I would be happy to answer any questions your Honor
13 might put to me. I join in Mr. Koskoff and Mr. Rosen's
14 objection.

15 THE COURT: Well, you know, I've been directing
16 questions along two areas: one, what would the harm be if I
17 allowed intervention to those who have been permitted certain
18 benefits as a result of this order, which included the entire
19 fire department, in some respects, because there were no tests
20 going to be given.

21 MR. KEYES: I understand that, your Honor.

22 THE COURT: No one would have been on the list, no one
23 would have been promoted until Doctor Flynn produced this new
24 exam that he's been working on, but aside from that, is the
25 specific prejudice. I thought we at least shared the opinion,

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1 it could be opened to contradiction and difference of opinion,
2 that the displaced men would not be prejudiced because they
3 would eventually be appointed.

4 MR. KEYES: I think your Honor made it plain in all
5 these conferences that anyone who would have been appointed
6 as a result of this lieutenants exam would have to be appointed.

7 Now, beyond that, there may be some combination of
8 circumstances that might occur. Who am I to say that it is a
9 possibility in the future that someone might be prejudiced?
10 But I know that your Honor went out of his way to devise ways
11 so that anybody who would ordinarily have been appointed in an
12 exam had this lawsuit never been heard of would have been
13 appointed. So with that regard, no one is prejudiced that I
14 know of.

15 THE COURT: Mr. Grazioso, what would you like to say?

16 MR. GRAZIOSO: Your Honor, I have nothing to add to the
17 arguments of counsel. I'd only say that having been present at
18 many sessions, that it seemed that all interests were represented
19 in the in camera conferences which were held in this matter.
20 The integrity of the civil service system and of this graduation
21 and the grades obtained by these men on the exams, I don't
22 think weigh any more heavily on the would be intervenors in
23 this case than they would on me personally, nor Mr. Keyes as
24 counsel for the City. I think it would be unfair to even assert
25 that those interests were not uppermost in our mind. I know of

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1 no individual in this Department who is here today who could
2 not have been here earlier. The order which was read, and it's
3 time to -- that order -- the notice which was read by Mr. Rosen
4 was one which was discussed in chambers with your Honor, with
5 counsel. It was distributed by the Chief and posted on the
6 bulletin boards of every firehouse in the City.

7 I have spoken -- well, I haven't -- spoken with the
8 Chief on that and ascertained that that was done, your Honor,
9 and I can just say that viewing your Honor's order and the
10 fact that any candidate, any white candidate who might have
11 been displaced, has been under the terms of your Honor's order,
12 the City has been ordered to appoint that person a lieutenant
13 within the life of this list. I fail to see that anyone has
14 been prejudiced by the Court's order. That's my own view of it,
15 your Honor.

16 THE COURT: All right. You may reply, Mr. Sagarin.

17 MR. SAGARIN: Your Honor, I think a couple of things
18 are important to point out. One is that this Court, I think,
19 has attempted to indicate to the people in the courtroom,
20 to ourselves, as attorneys, what to -- to some degree, what
21 happened, but a significant and serious question comes up if
22 this was supposed to be such an open proceedings, why were there
23 orders which were sealed to prevent anybody from coming in and
24 looking at it?

25 The Court has said there's no prejudice to any

1 individual, because it says that: look, there might only have
2 been 21 appointments, but instead, we made 28. But there is
3 prejudice to every individual, whether there be 21 or 28
4 appoints, who has placed higher on a merit examination and is not
5 receiving any appointment which the City can for any reason see
6 to open up, because he doesn't happen to carry a particular
7 color, and that's the prejudice we're talking about.

8 THE COURT: Well, he would be eliminated by the
9 two-year list, anyway.

10 MR. SAGARIN: If, in fact, that 21 -- they didn't go
11 over 21, but there's nothing to say they might not have gone to
12 30. That was a guess, and based on that guess, the Court made
13 certain orders. There's nothing to say there might not have
14 been a significant number of retirements or injuries or any-
15 thing else. All that was was a guess, and the point is that
16 what the Court has done, the prejudice that is being inflicted,
17 is that a man who has achieved a higher merit position is being
18 denied of an open position because of his race. We say that is
19 proscribed by the Constitution of the United States and by the
20 Equal Employment Opportunity Act, and by the Court of Appeals
21 in this Circuit.

22 But in addition to the group we represent, I think the
23 Court can be clear, that the particular corporate organization
24 that is named, which is, or it may or may not be, essential to the
25 particular group, but I think is a useful device to have in,

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1 particularly for class action purposes, was organized after the
2 Court's order.

3 I think, as we advised the Court in our order of proof,
4 the proposed intervenors would testify that it was their under-
5 standing that once we came to a new lieutenants exam designed
6 by a Doctor Flynn at the University of Connecticut, presumably
7 job related and job validated, we would have solved the problem,
8 and we would have promotions based on merit and based on the
9 results of that examination.

10 And it was only after all the in chamber conferences,
11 not published, no notices of which were sent out, no transcripts
12 of which were available to be read and perused, that the Court's
13 order comes out following a sealed order in December, in
14 which these gentlemen learn that they are -- system of promotion
15 is now going, at least in part, to be based on race, and this
16 is the principle for which they sought to intervene, to be sure
17 there is a possibility that if we intervene, certain already
18 established facts will be set aside, and all of the individuals
19 so affected have, to my knowledge, been so notified.

20 Some of the individuals -- for example, the one on the
21 list, who is identified, has said, "There's no conflict,
22 because I don't care. I think it's more important that the
23 principle be established than that I get a particular promotion."

24 These individuals have an opportunity to continue to
25 be represented by Mr. Flynn, that's his ^{c f} conflicting interest,

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1 but the interest which has not been represented is in the
2 interests of a nonquota system, and that's what we seek to
3 bring in.

4 Of course, you know, to hear Mr. Koskoff come in,
5 you would have thought that he was representing this group of
6 people to advise the Court what his purpose was in getting --
7 it's a simple purpose, he wanted particular people appointed,
8 I don't think the Court can in any way believe that he represented
9 any of the interests of this group of people. Whatever the
10 consultations were, whatever the inputs were, and I don't think
11 there's anyone in this courtroom who believes that this Court
12 very lightly entered its order on August 30, or did it without a
13 significant amount of thought and a significant amount of
14 concern, but the problem is that we should have -- in a suit of
15 this nature, where the parties -- when the people in interest
16 are readily identifiable, that there ought to be class
17 defendants who represent all of the interests. Because, other-
18 wise, it's one thing for the City to say: "Well, we were
19 looking out for their interests," but they're faced with a
20 million dollar damage claim, and any lawyer, any private lawyer
21 who was in that position would say, "I can't represent both of
22 you, I may have to settle the damage claim at the expense
23 of the nondiscriminatory promotion procedure."

24 It's just the fact of life. It's a fact of life that
25 Mr. Flynn, as a lawyer, cannot take a position which is designed,

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1 and properly so, to insure that particular people get promoted
2 and appointed, and then come on and say, "But I have to
3 preserve the promotion system free of considerations of race
4 or religion or creed," because he's got an interest in
5 getting particular people promoted.

6 It's a fact of life that nobody adequately represented
7 this interest, and it's also a fact of life that we're far from
8 a point such as Mr. Koskoff says, this litigation has to drag that
9 long. It can be expeditiously done, and it can be done when
10 all the people with proper interests have a day in court.

11 I do have a couple of procedural questions I'd
12 like to ask the Court. One is the Court has said this litiga-
13 tion is over. I have found the Court's order, I haven't
14 found a judgment in the file. I looked last week and I found
15 no judgment. Has judgment been entered? Or is that awaiting
16 the final determination of the costs, et cetera?

17 THE COURT: What's counsel's opinion? On the procedural
18 aspects just raised by Mr. Sagarin?

19 MR. ROSEN: The Federal Rules, your Honor, provide
20 that a judgment for purposes of a federal ruling is any order to
21 which an appeal lies, any final order. This is a final order,
22 in the sense that it is not preliminary or interlocutory in
23 character.

24 THE COURT: Do you doubt that, Mr. Sagarin?

25 MR. SAGARIN: Well, I have some questions about it

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1 because of the continuing nature of supervision, including the
2 continuing determinations as to cost, as to attorney's fees,
3 and as to what happens if less than 21 are -- become eligible
4 for promotion to captain.

5 But in any event, if that is to be treated as a
6 judgment and a final order, then we are at a point extended to
7 today in which we would seek time to file an appeal from that
8 order or file an appeal from the denial of intervention. It is
9 possible the Court can grant the intervention for purposes of
10 taking an appeal, but if that possibility remains open, we would
11 request the Court to extend the normal time for taking an
12 appeal from that order to the extent we're able to do it until
13 the Court decides our application, or I would ask the Court for,
14 say, three days following the date on which we learn of the
15 Court's decision.

16 THE COURT: To what? Let me understand your motion.

17 MR. SAGARIN: To file a notice of appeal, which is
18 the method of taking the appeal.

19 THE COURT: Notice of appeal from what?

20 MR. SAGARIN: Well, we would seek, A -- for example,
21 the Court might grant the intervention as we ask. Another
22 alternative is the Court might grant the intervention only for
23 the purpose of taking an appeal from that order. We would need
24 time to take that appeal. The Court might deny the application
25 to intervene, that's a different period of time, which begins to

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1 run -- I think we have 30 days after that denial of that
2 intervention.

3 But one of the things we want to do in appealing the
4 denial of our intervention is be free to advise the Court of
5 Appeals that what we really want to do is appeal the earlier
6 order, so we need the time to extend the time of that early
7 order until we know what our status is as intervenors.
8 Ordinarily, you have 30 days from an order. And, otherwise,
9 it's in a funny position of the case being here, the Court says
10 there is a final order, maybe we have to file the notice of
11 appeal right now. But I think it doesn't make for sound
12 procedure to do that.

13 THE COURT: All right. Mr. Koskoff?

14 MR. KOSKOFF: I would oppose anything that is
15 directed at appealing that order. I think that if the Court did
16 find that the petitioners were entitled to intervene, then
17 their only course of conduct would be to attempt at that point
18 to set aside the order, but that in itself would be a nonappeal
19 issue. In other words, the plaintiffs in the suit have yielded
20 their right to appeal, and I don't think that -- it would
21 place us in the position of having the intervenors having an
22 opportunity to appeal and having the plaintiffs in the lawsuit
23 waiving their right to appeal.

24 But I would not object to extending the period of
25 time -- well, until a reasonable time after your Honor rules

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1 on the petition to intervene in order to permit Mr. Sagarin to
2 appeal that denial of the permission to intervene if he
3 so desires.

4 MR. SAGARIN: The problem with that is it doesn't get
5 me by the 30 days from the 30 days from August 30, which I'm at
6 today. Either I have to file a notice from that appeal, in
7 which case the Court of Appeals is going to look at it and say,
8 "What are you going to do here?"

9 I'm going to say, "Well, we had 30 days to get here,
10 but they said, 'You aren't even in the suit.'" Then we're going
11 to say, "We're bringing -- to intervene, we need the 30
12 days," but unless we file a notice of appeal from that order from
13 30 days, we may be out of here altogether, even if we're
14 granted the application to intervene, so it seems to me that
15 just as a matter of sound procedure, it would be useful to
16 grant that motion to make the time to take any action we have
17 with respect to that order. If we're entitled to appeal
18 from it or not, to run from that time, we got notice in this court.

19 MR. KOSKOFF: I think that one point that should be
20 raised is that the Court in hearing the petition to intervene
21 can permit a petition to intervene for a limited purpose, or
22 it can prohibit it altogether.

23 THE COURT: That's the thought that came to mind.
24 Wouldn't I automatically not consider that under your various
25 motions, motion to intervene for the purpose of taking appeal?

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1 MR. SAGARIN: I think you are, and procedurally,
2 I think the record should reflect that I would simply say the
3 motion to extend the time is granted until this order is
4 heard, or until the application is decided. I think that if
5 the Court did nothing, we would probably be in that position.

6 THE COURT: Yes, I would think so. I deny your
7 motion to intervene. You can take an appeal from that order.

8 MR. SAGARIN: Why should we leave that situation open,
9 anyway?

10 THE COURT: If you draw an appropriate order which
11 encompasses the clear meaning of what we're trying to do here,
12 I'll probably sign it. Show it to the other parties, Counsel,
13 first.

14 MR. SAGARIN: The other procedural --

15 THE COURT: I'll rule on it later.

16 MR. SAGARIN: Excuse me, your Honor.

17 THE COURT: Yes.

18 MR. SAGARIN: The other procedural matter that's open
19 is that I'm not clear at this point whether the -- on what set
20 of facts the Court will decide this issue. We have heard an
21 offer of proof, we have heard representations by counsel, we
22 have heard questions from the Court indicating some things
23 which happened in chambers, which it believed happened.

24 One of the significant things we would request is
25 that sealed orders are opened up so we can, at least to the

1 extent necessary, make it a part of this record, that we can
2 understand what happened, more fully understand what happened
3 in December. Or are we taking the representations of Mr.
4 Grazioso -- I think was taking as an attorney -- as an offer
5 of proof as to what he would testify to if he were called on
6 to testify. If I'm going to properly, at least, keep this
7 case in a posture where we have to take an appeal from the Court's
8 order, I think at -- point we ought to know -- as the Court
9 says, don't put on your evidence -- don't have to do it.

10 THE COURT: I'm not saying anything of the sort. It is
11 your case, it is your motion. I'm sitting here.

12 MR. SAGARIN: Well, then, I have --

13 THE COURT: If I knew when I was going to do it, I
14 would do it right now from the bench, but I want the benefit of
15 briefs, I want the benefit of all the input that you can
16 contribute to aid the Court in this. I'm not cutting you off.
17 I asked you for an offer of proof just to get a feel for
18 your position.

19 MR. SAGARIN: Then, I would ask the Court, it being a
20 quarter of 5:00 now, and I know it's a long time -- for the
21 Court to suggest a time in which we can put on the testimony.

22 THE COURT: Well, I wouldn't mind staying for a while,
23 but I do have another hearing today, and I think I shouldn't
24 delay that. I don't know.

25 I guess, Mr. Rosen, you are pretty well tied up, and

1 all the other attorneys. It is your feeling that the offer of
2 proof -- do you think this is a fair way to proceed: that your
3 officer of proof either is accepted by the Court as part of
4 its finding as true, except with respect to the conclusory
5 statements, but the factual statements contained therein, and
6 I rule on that basis? And if I find that the offer of proof
7 is subject to testimony, I'll so notify you. Is that satisfactory?

8 MR. SAGARIN: I think that's fair, your Honor.

9 THE COURT: When you say so and so is 29th on the
10 list, and I don't think he is, I certainly would let you know.

11 MR. SAGARIN: I think, to be fair to the Court,
12 because I can appreciate the Court's position, I would like to
13 advise the Court in writing as to exactly what the offer of proof
14 is so the Court doesn't have to sift through a transcript and
15 cull out argument from factual offers, at that point, we would
16 request that the Court either say: for the purposes of
17 motion, we accept the offer of proof, we want to hear
18 testimony subject to cross examination on it.

19 THE COURT: That seems fair enough to me.

20 MR. SAGARIN: I would ask the Court if I could have
21 a few days just to file that.

22 THE COURT: Yes. I'll certainly give you a few days
23 to do that. About how much time?

24 MR. SAGARIN: If possible, your Honor, because of
25 certain pending matters for this week, I'd like to have till

1 next Tuesday.

2 THE COURT: All right.

3 Do you want to wait till you get supplemental brief
4 and statement from Mr. Sagarin before you reply?

5 MR. KOSKOFF: Yes, we would, your Honor.

6 THE COURT: How much time do you want after you
7 receive Mr. Sagarin's brief?

8 MR. KOSKOFF: I think one week after that would be
9 fine.

10 THE COURT: All right. Satisfactory? One week?

11 MR. KEYES: Yes, your Honor.

12 THE COURT: Mr. Flynn?

13 MR. FLYNN: Yes, your Honor.

14 MR. SAGARIN: We have a right to reply, if necessary,
15 your Honor?

16 THE COURT: How much time you want?

17 MR. SAGARIN: No more than a week.

18 THE COURT: That's granted.

19 Would the parties to this action in their briefs
20 please set forth the chronology of events? Now, by no means is
21 it possible for anyone to relate over 23 different conferences
22 that the Court has held with counsel and various other parties
23 to resolve this lawsuit, I don't mean for you to do that. What
24 I want is such things as matters of record that is on such and
25 such a date I issued a temporary restraining order, which had

1 the following effects. On another date, this occurred, and
2 so forth. Such things as Mr. Rosen brought up. The notice
3 in all the firehouses, that I might not have a clear recollection
4 of or my notes may not reveal. But I think it would be
5 helpful if I had the benefit of everyone's recollection as to
6 what went on over this past eight or nine months. All right.

7 MR. SAGARIN: One of the things I ask was that the
8 Court unseal that previously sealed testimony.

9 THE COURT: Well, I think Mr. Flynn has unsealed it.
10 Is there any objection?

11 MR. ROSEN: No, your Honor, no objection.

12 MR. KEYES: No objection.

13 THE COURT: There being no objection, the Court orders
14 the December memorandum to be unsealed.

15 MR. FLYNN: There are two, your Honor, December 5
16 in camera as amended.

17 THE COURT: They may be unsealed.

18 MR. SAGARIN: Thank you, your Honor.

19 THE COURT: I am going to take a five-minute recess,
20 and then I'll take the Farinholt's hearing.

21 (Recess taken.)

22

23

24

25

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NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRD SOCIETY, ET AL : :

v.

: CIVIL NO. 15876

MEMBERS OF THE BOARD OF FIRE
COMMISSIONERS, ET AL : February 5, 1975

NOTICE OF APPEAL

Notice is hereby given that the intervening applicants (F.C.P.C.S., et al) hereby appeals to the United States Court of Appeals for the Second Circuit from the ruling on Motion To Intervene filed by this Court (Zampano, J.) on February 3, 1975.

Dated at Bridgeport, Connecticut this 5th day of February, 1975.

Respectfully submitted,

BY

J. DANIEL SAGARIN
Attorney for intervening
applicants
Schless and Sagarin (54497)
855 Main Street
Bridgeport, Connecticut 06604

SCHLESS & SAGRIN
ATTORNEYS AT LAW
855 MAIN STREET
PEOPLE'S SAVINGS BANK BUILDING
BRIDGEPORT, CONNECTICUT 06604

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ORDER

The foregoing having been heard, it is hereby GRANTED/DENIED.

BY THE COURT

J.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent, postage prepaid, to Attorney W. Paul Flynn; Attorney David N. Rosen; Attorney Michael P. Koskoff; and Attorney Roger J. Frechette, on this 5th day of February, 1975.

J. DANIEL SAGARIN

SCHLESS & SAGARIN
ATTORNEYS AT LAW
655 MAIN STREET
PEOPLE'S SAVINGS BANK BUILDING
RIDGEPORT, CONNECTICUT 06804

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COPY OF NOTICE SENT TO FIRE DEPARTMENT

A lawsuit has been filed against the Department charging racial discrimination in hiring and promotions.

The Plaintiffs have obtained a temporary order from United States District Judge Robert C. Zampano. A copy of that order and of the relief sought by the Plaintiffs is available at each Fire House.

Any members of the Department wishing to intervene in this lawsuit are entitled to intervene and should seek counsel immediately in order to be present at a pre-trial hearing in the District Court at 2 p.m., Monday, October 15, 1973.

This notice is distributed to all the law
suit parties^{at the request of} in order to give notice to all members of the Department.

204A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FIREBIRDS, ET AL

VS.

CIVIL NO.

MEMBERS OF BOARD OF FIRE
COMMISSIONERS, ET AL

TEMPORARY RESTRAINING ORDER

It appearing to the Court that the Plaintiffs are about to suffer the irreparable injury referred to in their complaint, to wit:

- a) That Defendants will or may assign white officers of the New Haven Department of Fire Services to positions in violation of Plaintiffs' right to equal employment opportunity thereby foreclosing the opportunity of Plaintiffs' and the class they seek to represent to become officers in the foreseeable future;
- b) That defendants will or may assign white firefighters chosen in violation of Plaintiffs' constitutional right to equal employment opportunity and thereby foreclose the opportunities of Plaintiffs and their class to work for the Department for the next year, as well as creating a racially more segregated Department for many years to come.
- c) That Defendants will or may select personnel on the basis of tests and other selection devices which discriminate against Plaintiffs and their class;

205A

AND, notice having been given to the Defendants and they having been given an opportunity to be heard, it is hereby

ORDERED:

That the Defendants, their successors, employees, agents, servants, and their successors be and hereby are restrained from the following conduct until further order of this Court:

(a) Assigning anyone not in Plaintiffs' class to positions to which they were appointed on or after the date Defendants or any of them were formally notified of the pendency of Plaintiffs' complaint with the EEOC.

(b) Administering any written exams in conjunction with promotions within the Department.

(c) Hiring or promoting anyone not in Plaintiffs' class from the eligibility lists for positions within the Department.

AND, it is further ORDERED: That this order shall expire within _____ days from the date hereof unless within that time it is extended and it is further

ORDERED, that a copy of this temporary restraining order and a copy of the complaint and other papers hereto attached together with proper summons issuing by the Clerk of this Court be immediately served by an indifferent person upon the Defendants.

Issued at New Haven, Connecticut, October , 1973 at

are required to take affirmative actions to dissipate the effects of their discriminatory and unlawful behavior. The right of the plaintiffs and the classes they represent are among the most fundamental in nature--the right to be fairly considered for a government job for which they are fully qualified rather than being discriminated against because of their race and cultural backgrounds. The interest of the public in bringing an end to discriminatory hiring practices in local government bodies and in having a Fire Department that draws its personnel from all segments of the community, will be significantly advanced by the Court's exercise of its equity powers.

B. EMERGENCY RELIEF

25. In order to prevent continuing discrimination against and further irreparable injury to plaintiffs and members of their class within the next ten days and thereafter, plaintiffs respectfully request this Court to enter a Temporary Restraining Order and a Preliminary Injunction restraining defendants and their successors in office, agents, employees and their successors in office from:

- (a) assigning anyone not in plaintiffs' class to positions to which they were appointed on or after the date defendants or any of them were formally notified of the pendency of plaintiffs' complaint with the EEOC.
- (b) administering any written exams in conjunction with promotions within the Department.
- (c) hiring or promoting anyone not in plaintiffs' class from the eligibility lists for positions within the Department.

(d) taking any action which would have the effect of denying, abridging, withholding, conditioning, limiting, or otherwise interfering with the rights of plaintiffs and members of their class to equal employment opportunities pending the outcome of this litigation.

C. PERMANENT RELIEF

26. For permanent relief, plaintiffs respectfully pray that this Court:

1) Enter its permanent injunction

(a) Granting the relief prayed for in Paragraph 25 of Section B above.

(b) Restraining and enjoining the Department and Civil Service Commissioners and their successors from administering or otherwise making use of any test as a criterion for appointment to or promotion within the Department which has not been prepared and validated in accordance with sound standards of professional psychological testing as accurately measuring the merit and fitness of candidates to perform the tasks of the position for which the test is being administered.

(c) Requiring the Civil Service Commission to promulgate Spanish language versions of all future entrance and promotional exams together with appropriate qualifying, non-competitive exams to test for minimum English proficiency. *

(d) Awarding plaintiffs and their class back pay.

(e) Eliminating all time-in-grade requirements for the plaintiffs and their class in the Department.

(f) Eliminating the currently existing height and weight requirements for employment by the Department and the exclusion of those with arrest records.

2) Retain jurisdiction of this action and order defendants to submit for the Court's approval:

(a) A revised system for promotions under which qualified applicants are to be selected only from the class of plaintiffs, as openings arise, until they are represented as officers in the Department in proportion to their number among residents of the City of New Haven; or

(b) A revised system for promotions under which qualified applicants are to be promoted alternately, one white and one minority from the class of plaintiffs, as openings arise, until they are represented as officers in the New Haven Fire Department in proportion to their number among residents of the City of New Haven; and

(c) A revised system of hiring under which qualified applicants will only be hired from the class of plaintiffs, as openings arise, until they are represented in the Department in proportion to their number among residents of New Haven; or

(d) A complete plan for promotions, recruitment and hiring which includes as part of any proportional hiring plan that such plan shall apply to all hiring done after filing of plaintiffs' complaint with the EEOC.

(e) Granting of seniority to plaintiffs and members of their class back to the date that they first applied for a position in the New Haven Fire Department regardless of whether or not they passed the hiring selection criteria which have been determined to have been discriminatory.

3) Award plaintiffs and their class actual damages of ONE MILLION (\$1,000,000.00) DOLLARS.

4) Award plaintiffs and their class punitive damages
of ONE MILLION (\$1,000,000.00) DOLLARS.

5) Grant such additional relief as may appear to the
Court to be equitable and just.

6) Allow plaintiffs their costs herein, including
reasonable attorneys' fees.

Dated: October 3, 1973.

THE PLAINTIFFS,

By MICHAEL P. KOSKOFF
1241 Main Street
Bridgeport, Connecticut
203 336-4406

DAVID N. ROSEN
EDWARD J. DOLAN
265 Church Street
New Haven, Connecticut
203 787-1920

Their Attorneys

210A

SELECTED NEWSPAPER CLIPPINGS PRODUCED
BY PLAINTIFFS AT HEARING

JOURNAL-COURIER, TUESDAY, JANUARY 22, 1974

Zampano Extends Deadline Over Fire

U.S. District Judge Robert C. Zampano Monday extended by 11 days the New Haven Fire Department's deadline for coming up with an eligibility list for promotion to lieutenant. Zampano had ruled Dec. 2 in Service Commission Attorney Thomas F. Keyes Jr. and Civil City Corporation Counsel to the extension. Zampano said after the brief talks, Zampano told Zampano has suggested, and to report back Nov. 12 for another meetings.

sons wishing to take the test will not end until mid-April. The group also discussed the department's promotion Jan. 8 was settled Dec. 1. Counsel black firemen, said they agreed of two first grade firemen to lieutenant, and will meet with captain, but made of filling vacancies. Chambers Monday that the test will be given in mid-April, with

U.S. District Judge Robert C. Zampano Monday extended by 11 weeks the New Haven Fire Department's deadline for coming up with an eligibility list for promotion to lieutenant. Zampano had ruled Dec. 2 in Service Commission Attorney Thomas F. Keyes Jr. and Civil City Corporation Counsel to the extension. Zampano said after the brief talks, Zampano told Zampano has suggested, and to report back Nov. 12 for another meetings.

The Firebirds' suit charges the city, the Civil Service Commission, and the Fire Board with discrimination in the hiring and promotion of minority group members.

Fire officials, meanwhile, have to figure out what to do with 16 recruits who will finish training Nov. 9 but who cannot be assigned to positions until the suit is settled.

When the Firebirds filed its suit, Zampano issued a temporary restraining order preventing the department from assigning the recruits to permanent positions or promoting 17 lieutenants to captain. The Fire Board had approved in August the assignments and promotions, but the procedure they used is questioned by the suit.

Zampano's temporary order has been extended each time he has met with the Firebirds and city officials. The latest extension expires Nov. 12, three days after the recruits finish training and are available for assignment.

Minority Firemen Recruitment Issues Over 500 Applications

Fire Department officials report the minority recruitment program has handed out more than 500 applications in its effort to get more blacks and Hispanics into the department.

The recruitment drive is to end April 19, at which time people seeking employment with the Fire Department must have their applications at the New Haven Civil Service Commission offices.

Additionally, Asst. Fire Chief John E. Smith said the Civil Service Commission has received 150 applications from firefighters to take the examination for lieutenant.

The minority recruitment program, under acting Fire Lt. Earl Geyer, was ordered by U.S. District Judge Robert C. Zampano, after the Firebirds, an association of black firemen, brought suit in federal court to increase minority personnel on the fire department.

Judge Zampano ordered that 16 of the next 24 firefighters hired come from New Haven's 30 per cent minority population, and afterwards that one minority member be hired by the fire department for each non-minority member hired until the force has 75 minority members among its 500 personnel.

JEFF BELMONT

6 Apr 74

Firebirds Suit Still Stalled

By DICK CONRAD
Journal-Courier Staff Reporter

City officials and black firemen met privately with U.S. District Judge Robert C. Zampano Monday but again failed to resolve the firemen's hiring and promotion discrimination suit against the city.

Monday's meeting was the third this month for the group, and indications from participants were that little progress has been made in settling the suit filed Oct. 5 by the Firebirds, a group of black city firemen.

Corporation Counsel Thomas F. Keyes Jr. said attorneys for both sides were asked by Zampano to discuss with their clients the possible solutions Zampano has suggested, and to report back Nov. 12 for another meetings.

The Firebirds' suit charges the city, the Civil Service Commission, and the Fire Board with discrimination in the hiring and promotion of minority group members.

Fire officials, meanwhile, have to figure out what to do with 16 recruits who will finish training Nov. 9 but who cannot be assigned to positions until the suit is settled.

When the Firebirds filed its suit, Zampano issued a temporary restraining order preventing the department from assigning the recruits to permanent positions or promoting 17 lieutenants to captain. The Fire Board had approved in August the assignments and promotions, but the procedure they used is questioned by the suit.

Zampano's temporary order has been extended each time he has met with the Firebirds and city officials. The latest extension expires Nov. 12, three days after the recruits finish training and are available for assignment.

Fire Chief Francis J. Sweeney is on vacation and could not be reached for comment Monday. Asst. Chief John E. Smith said no decision will be reached on what to do about the promotions or assignments until Sweeney returns.

The 16 recruits and 17 captains are integral to the department's plan to add a third battalion.

Firebirds have been represented by attorneys David Rosen and Michael Koskoff. The Civil Service Commission is represented by Frank M. Grazioso, and W. Paul Flynn represents the fire union.

The Firebirds in June filed a complaint with the Equal Employment Opportunity Commission, charging the city with hiring and promotion discrimination. According to the Firebirds' complaint, only 18 of the 502 men in the Fire Department are black, and only one of the department's 107 officers is black.

211A

Fire Bias Suit Stalls Recruits

Sixteen fire department recruits who finish training today may be back in training Tuesday if a promotion and hiring suit filed against the department is not settled in federal court Monday.

U.S. District Judge Robert C. Zampano has ordered that the fire department not assign the men to permanent positions until the suit, filed by the Firebirds, is settled. Attorneys for the city and the Firebirds, a group of black firemen, will meet with Zampano Monday for their fourth attempt to settle the case.

Fire Chief Francis J. Sweeney said this week that if no agreement is reached Monday, the 16 men will be sent back to the training school to review matters they covered during their six weeks of recruit training. The men will be paid regardless of whether they are assigned to permanent posi-

tions or remain in training. Sweeney added:

Sweeney said he has been in contact with city Corporation Counsel Thomas F. Keyes, who is handling the case for the city, and would relay his comments to fire commissioners in an executive session Wednesday afternoon.

The Firebirds' suit, filed Oct. 5, charges the city, the Fire Board, and the Civil Service Commission with discrimination in the hiring and promotion of minority group members. Zampano's order also prevents the board from promoting 17 lieutenants to captain.

The 16 recruits and 17 captains are integral to the department's plan to reorganize from two into three battalions. Sweeney said Wednesday that Zampano's order has not yet delayed plans, because the department's change would not occur for several weeks.

10 Oct 73

Firebirds, City Meet; No Accord

Attorneys for the city and for black firemen met privately for three hours Monday with U.S. District Judge Robert C. Zampano, but failed to resolve the firemen's "hiring and promotion" discrimination suit against the city.

Corporation Counsel Thomas F. Keyes Jr., attorneys for the Firebirds, a group of black city firemen, and fire union counsel W. Paul Flynn met with Zampano in what Flynn called "an attempt to head off a long court fight" on the Firebirds suit. The suit, filed Oct. 5, charges the city, the Civil Service Commission, and the fire board with discrimination in the hiring and promotion of minority group members.

Flynn said the meeting with Zampano covered "areas about which there may be serious dispute, and the points of view of groups representing the various interests."

Atty. David Rosen and Michael Koskoff represented the Firebirds at the meeting.

Flynn said the various participants plan to meet again with Zampano Friday. They had met, minus Zampano, Thursday in Keyes' office.

The Firebirds claim that entrance and promotion exams are culturally biased against non-whites. As evidence, they point out that only 18 of 502 men in the Fire Department are black, and only one of the department's 107 officers is black.

In response to the suit, Zampano issued an order preventing the Fire Department from assigning 17 white captains or 16 recruits who were respectively promoted and appointed in August. That order was to expire Monday, but Zampano extended it to Friday.

DICK CONRAD

City, Firebirds' Attorneys To Seek Settlement Monday

Attorney for the city and for the black firemen will meet privately Monday with a federal judge to try to settle the firemen's "hiring and promotion" discrimination suit against the city.

Corporation Counsel Thomas F. Keyes Jr. and attorneys for the Firebirds, a group of black city firemen, met in Keyes' office Thursday afternoon to discuss the suit, in which the Firebirds charge the city, the Civil service Commission, and the fire board with discrimination in the hiring and promotion of minority group members.

Attorney David Rosen, counsel to the Firebirds, said the meeting was "an attempt to see whether this thing can be settled without a long court fight." Rosen said he had discussed with Keyes "what our minimum demands are."

Keyes, Rosen and W. Paul Flynn, who represents the firemen's union, will meet Monday at 2 p.m. with U.S. District Judge Robert C. Zampano.

The Firebirds' suit, filed a week ago, claims that entrance and promotion exams are culturally biased against non-whites. Mandatory age and height requirements, the suit says, have been waived for white applicants but not for non-whites.

In response to the suit, Zampano issued an order preventing the Fire Department from assigning 17 white captains or 16 recruits who were respectively promoted and appointed in August. That order expires

Aug. 1. Rosen said Thursday that the 17 new captains will not be assigned to their appointed pos-

tions until the 16 recruits finish training. They will finish six weeks of training in mid-November he said, and at that time they and the new captains will be assigned.

The 17 captains and 16 recruits are integral to the department's plan to add a third battalion, Sweeney said.

The Firebirds in June filed a complaint with the Equal Employment Opportunity Commission, charging the city with hiring and promotion discrimination. The EEOC notified the Firebirds, however, that it would be unable to act on the complaint until January of 1974.

According to the Firebird's suit, only 18 of the 502 men in the Fire Department are black, and only one of the department's 107 officers is black.

DICK CONRAD

212 A

Federal Court Ruling City Fire Officials Told To Up Minority Hiring

The New Haven Fire Department has been ordered to hire 16 qualified blacks and Hispanics among the next 21 openings in its ranks and subsequently to hire on a one-minority-one-white basis until 75 minority members are hired.

U.S. District Court Judge Robert C. Zampano, in an order handed down here Friday, also told the city, that of the next 22 appointments to the rank of lieutenant, seven must be from minority groups.

Noting that he was acting with the acquiescence of all parties in the dispute, Zampano brought to an end litigation over the minority representation question in the department that has been awaiting a decision for over a year.

The suit against the alleged racial imbalance in the department was brought by the New Haven Firebirds — a group of minority members in the fire department.

About one out of 25 men in the department is black or Hispanic in a city where almost one out of three persons is of a racial persons is black or Hispanic.

Ruling that any state or local laws in conflict with his order are invalid, the judge said that of the next 21 vacancies in the department, 16 must be filled with minorities, and from then on with minorities, and subsequently on a one to one basis until 75 minorities are hired.

Seven of the next 22 promotions to lieutenant must be from minorities, the ruling indicates, and no exams for the rank from captain can be held until those

2 lieutenants qualify to take the exams.

Michael P. Koskoff, the Bridgeport lawyer who represented the group of minority firemen who instituted the suit, said Friday the ruling will also insure that the exams for the rank of lieutenant and captain will not be culturally biased.

City Firemen Protesting Court's Promotion List

By JEFF BELMONT
Staff Reporter

A number of firefighters are to gather today at 3:30 p.m. at central fire headquarters to

dramatize their displeasure of appealing the court ruling, which he recognized to be an expensive and drawn-out affair.

He said the union might be in conflict of interest if it became party to a suit because the union represents all New Haven firefighters of the rank captain and below, as well as blacks, Puerto Ricans and whites.

The suit, prepared by U.S. District Court Judge Robert C. Zampano, is based on Civil Service examinations conducted in April and resulted from a suit brought by the Firebirds, an association of the 18 minority firefighters in the 480-member department.

The disgruntled firefighters say white firemen on the eligibility list were replaced with black and Spanish-speaking candidates to achieve Judge Zampano's ruling of Friday that seven of the next 22 lieutenants be minority members.

Judge Zampano released a list of 67 eligible applicants, including two minority members, among the top eight scorers. There are currently eight vacancies in the lieutenant's rank.

However, some firefighters have alleged the list was rearranged by the court, and on the test's raw score, the highest scoring black firefighter placed 18th. Normally, the fire department promotes men in order of their test scores (highest first).

Meanwhile, President John B. Rourke, of the 480-man Local 825 International Association of Fire Fighters, said today he also knew of no duplicate lists, but added he was going to contact his international headquarters concerning the possy.

1974

THE NEW HAVEN REGISTER, FRIDAY, FEBRUARY 15,

Minority Recruiter Picked For Firemen

By BOB GREENLEE
Staff Reporter

The first step in U.S. District Court Judge Robert C. Zampano's court order issued against the Department of Fire Services and Civil Service Commission has begun with the appointment of firefighter Earl D. Gever as acting lieutenant

in charge of recruiting for minority group members.

Gever, a 12-year veteran in the department and a member of the Firebird Society, will be responsible for encouraging black and Puerto Rican persons to apply for appointment to the Fire Department.

Last year the Firebirds, an

organization of black firefighters, brought suit against the city, the Department of Fire Services and the Civil Service Commission, charging discrimination in hiring and promotional practices.

While the suit was not resolved by a full court hearing, a

court order was issued, after consultation between attorneys for all parties in Judge Zampano's chambers.

Judge Zampano's order covered every aspect of recruitment, hiring and promotional practices.

213A

14 . 200477

Settlement Path Of Firebird Suit Not An Easy One

By JEFF BELMONT
Staff Reporter

The painstaking steps by which U. S. District Judge Robert C. Zampano's court reached a cut-of-court settlement protecting the rights of minority menen to be promoted were revealed Tuesday as a group of black firemen sought to have the settlement re-enforced.

Zampano's face at times showed concern as he reviewed the 23 exchanges sessions, taking more than a year, that led to the Aug. 20, 1974 court decision.

Tuesday's court action was headed by nearly 125 firemen, mostly white, as attorney James Sagrin of Bridgeport urged the court to permit his clients — the newly formed Firefighters Committee to Preserve Civil Service, Inc. — to urge the settlement on the grounds their rights had been rejected by the court settlement.

Judge Zampano and Michael Koskoff, attorney for the 18 black firemen (the Firebirds Society) on the force, discussed the settlement, revealing for the first time publicly how it was arrived at.

Judge Zampano said that first a settlement was not reached between a small group of lawyers in the judge's chambers, at that considerable outside expertise was sought and used, besides Judge Zampano and Koskoff, parties to the settlement included lawyers David Rosen, also for the Firebirds, Tomas F. Keyes Jr. for the city of New Haven, Frank M. Grazioso for the Civil Service Commission and Paul Flynn who originally represented 17 men whose promotion to captain was delayed by the Firebirds' suit.

For more than a year, promotions and the enlistment of new firefighters was prohibited by federal court orders because of the pending suit, but nonetheless, the court overlooked the Fire Department's promotion of captains, two lieutenants, 18 men in the fire training school about to graduate, and 10 others about to enter training.

The court then ordered a racially balanced promotion examination prepared and administered.

Armed with the test results, Judge Zampano said, the court concluded that if the normal course of events were allowed to continue that 21 firefighters were likely to be promoted to lieutenant during the normal two-year span a promotion list is good for, with the firefighter receiving the highest mark promoted first.

The judge then said he allotted seven black firefighters, one every three slots, for promotion, and the seven white firefighters displaced by the seven blacks were pushed to numbers 22-23. In issuing the settlement, the judge also ruled the promotion list would remain in effect until 23 men were promoted to lieutenant.

The judge said the order attempted to preserve the rights of all individuals involved in the promotions.

Meanwhile, the parties to the suit made several commitments including that the Firebirds would not press their \$1 million claim against the city for damages and that none of the parties would appeal the settlement.

At one point in Tuesday's proceedings, Judge Zampano mused, "If I undid everything that was done..." and he recalled that the firefighters appointed to the department would have to be fired, the promoted men demoted, and the parties would have their rights to appeal and bring a monetary claim for damages reinstated.

Both Keyes and Grazioso joined in the Firebirds' objection to allow Sagrin's clients to reopen the issue, saying that the white firefighters and higher ranking officers had their opportunity to join in the original discussions as they were underway. Rosen brought the court's attention to the fact that notices were posted on all firehouse bulletin boards notifying fire department personnel of the pending suit and advising interested parties to obtain legal representation.

In discussing the case, Koskoff, Rosen, Flynn, Grazioso and Keyes all said that the judge consistently strove to protect the rights of those firefighters who might be affected by the slotting in of the black minority firefighters for promotion to lieutenant.

Judge Zampano gave the attorneys three weeks to file briefs and answering briefs in connection with the case and he will rule on reopening the case following his examination of these.

Promotions Cited Bias Claimed In Fire Dept.

By ROBERT GREENLEE
Register Staff Reporter

The New Haven Firebird Society, an organization of black firefighters, Sunday charged the city and the Fire Department with "stacking" the position of captain, thereby preventing any minority firemen from attaining that rank within the next 10 years.

In addition, Firebird President George Sweeney said the organization is considering court action to prevent both the city and the Department from making any further promotions until they answer charges of a federal complaint the Firebirds filed against them.

Last Thursday the Board of Fire Commissioners announced

promotions of 17 lieutenants to the rank of captain.

Sweeney said, "The city nor the department has taken into consideration one of the parts of our Equal Employment Opportunity Commission complaint—stacking the list so that minority persons who would be eligible for promotion may not be promoted for some time to come."

The Firebirds also charged the department does not have an "active recruitment campaign aimed at increasing the minority representation within the department, with the exception of our own program."

In June the Firebirds filed their EEOC complaint charging both the city and the department with discriminatory practices both in hiring and promotion of minority group members.

According to the Firebirds, the city has received notification that it is under investigation by the EEOC.

However, the EEOC investigation does not prevent the city from appointing new members or promoting in the department.

Therefore, the Firebirds maintain they are forced to consider subsequent court action to prevent any further hiring or promotions until the EEOC investigation is complete.

Attorneys at the EEOC office in Washington said, "the mere filing of a complaint does not mean that our office will seek an injunction order in behalf of the complainant."

They did, however, indicate that when a complaint is filed, the complainant should also consider court action along with the complaint.

The attorneys further noted that in most instances when a complaint is filed, it takes approximately 90 days before EEOC even begins an investigation. They also maintained that there is a very heavy case-load backlog to compound the agency's investigatory process.

According to Sweeney, the Firebirds will confer with their attorneys this week to discuss what form their court action will take.

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Firemen Put Off On Tests

By DICK CONRAD

Journal-Courier Staff Reporter

Firemen who in late April took an examination for promotion to lieutenant will apparently have to wait several weeks more to find out how they did on that test.

Attorneys involved in a federal court suit that involves the lieutenant's exam have been trying since scores were computed to agree on how the Fire Department will fill five vacancies at the rank of lieutenant. Principals in the case have said almost weekly that some agreement is near, but there has been no settlement and the federal judge handling the case is in the middle of a one-month vacation.

Negotiations have all been conducted privately in the offices of the judge, Robert C. Zampano, and attorneys claim he has ordered them not to discuss the case with anyone except clients—the city, Civil Service Commission and the Firebirds, a group of black city firemen.

The Firebirds filed suit in October against the city and Civil Service Commission charging discrimination in the hiring and promotion of blacks. A new and culturally unbiased lieutenant's examination was included in a partial settlement of the suit in December.

Reports first indicated that the list of examination scores contained several mathematical errors. Sources close to the case have reported recently, however, that the problem involves the scores attained by minority candidates.

One source reported that no minority firemen scored in the top 10 of those taking the test. Since no promotional examinations the department fills vacancies according to test rank, no minority firemen could be promoted at this time.

Civil Service Commission Attorney Frank M. Grazon and Corporation Counsel Thomas F. Keyes Jr. have reportedly been trying to come up with options that would allow appointment of one or two minority firemen even though they would not normally qualify. Some firemen in line for promotion say they have already retained attorneys for a court

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fight should they be passed over.

Unanswered is the question of why there is such an effort to appoint a minority candidate to the rank of lieutenant. The December partial settlement of the Firebirds' suit specified that 13 of the next 24 firemen hired be blacks or Spanish-speaking persons, but made no requirement at the rank of lieutenant. The court ordered only that the Civil Service Commission present to the court the results of the test, and the test itself, for evidence of good faith.

Hoped On Firebirds

The city and a group of black firemen may reach an agreement this week that will allow the Fire Department to fill eight vacancies at the rank of lieutenant.

Opponents in a federal court battle over hiring and promotion policies in the Fire Department, the two sides are reportedly near accord on how the vacancies will be filled. Firemen took examinations for the posts in late April.

In a related matter, the Civil Service Commission is expected to respond soon to a series of questions asked by Journal-Courier about a police entrance examination that, like the fire lieutenant's exam, was designed to avoid any racial bias.

In the police examination, minority candidates reportedly achieved an average score of about one-half the average white score. The Journal-Courier has asked the commission how much consideration is given to scores when it hires policemen, and how good a measure the test is of an applicant's ability to be a policeman.

Sources have indicated that the delay in posting results of the fire lieutenant's exam and making promotions involves scores attained by minority candidates. No blacks reportedly scored in the top 20 of those taking the test.

Since no promotional examinations the department fills vacancies according to test rank, no minority firemen could be promoted at this time.

U.S. District Judge Robert C. Zampano, who has handled the suit filed by the black firemen, known as the Firebirds, against the city, Civil Service Commission and Fire Department, returns from a month-long vacation this week.

Sources have reported from time to time that a break was taken on the lieutenant's exam, but no settlement has followed. A new factor, however, is that the case has been tentatively scheduled for an open court hearing in September.

Since the suit was filed in October, all negotiations have been conducted in the attorneys' offices or in Zampano's chambers. Attorneys and Zampano have refused to comment on the nature of discussions and have appeared in court only once. At that session an agreement on another part of the suit was announced.

DICK CONRAD

Hiring Of Black Firemen Stalled

By DICK CONRAD
Journal-Courier Staff Reporter

The Fire Department will be unable to add to the small number of blacks on the force before expiration of the present civil service list in April.

Asst. Chief John Smith said Tuesday that only two blacks took the last civil service examination in 1972 and both

were appointed to the department Sept. 6.

The two bring the number of black firefighters to 20, or about three per cent of the total work force of 517. According to 1970 census figures, about 50 per cent of the city's population is black or Spanish-speaking.

There are no firemen of Puerto Rican extraction in the department.

Smith said that the department "did everything in its power to try to get minorities to take the exam."

"We apparently asked the wrong community leaders for help in recruiting applicants."

Smith said he is "sure" that the department will have no problem recruiting minority group members to take the next exam in early 1974.

"We won't exhaust the present list until then because we don't have the turnover factor of the police department," he added.

The Firebirds, an organization representing black New Haven firemen, has charged the department with not having an active recruitment committee aimed at increasing the minority representation within the department.

THE JOURNAL-COURIER, FRIDAY, AUGUST 9, 1974

Firebirds, City Confer Again

By DICK CONRAD
Journal-Courier Staff Reporter

Attorneys for the city and black firemen met with a federal judge Thursday and reportedly moved closer to an agreement that would permit the New Haven Fire Department to fill eight vacancies at the rank of lieutenant.

Attorneys and U.S. District Judge Robert C. Zampano will meet again in a week for more discussions on an examination firemen took seeking promotion to the rank of lieutenant. The lawyers have been asked by the judge not to comment to anyone on the nature of the discussions, said but one after Thursday's two-hour session that progress had been made.

The black firemen, known as the Firebirds, filed suit in October against the city, the Civil Service Commission, and the New Haven Fire Department, charging discrimination in the hiring and promotion of minority persons. Part of the December settlement of that suit provided for the creation of an unbiased examination for firemen seeking promotion to lieutenant.

The examination was given in

April, and the results presented to Zampano in May. Since then, attorneys have met with the judge several times and with each other to try to work out apparent problems.

Sources have reported that the delay in releasing the list is due to attempts to find a way to promote some minority candidates. None of those who took the test reportedly achieved high enough grades to be promoted under normal rules.

City, Firebirds Solve Hitch In Court Talk On Lieutenants

By DICK CONRAD
Journal-Courier Staff Reporter

Attorneys for black firemen and the city were back in federal court Monday to iron out a hitch in the settlement of the firemen's hiring and promotion discrimination suit against the city.

The hitch involved the apparent violation of the court settlement by the fire department, which Jan. 8 assigned two men to vacancies at the rank of lieutenant. The Dec. 2 settlement allowed the department to fill seven vacancies at the rank of captain, but made no mention of filling the lieutenants' spots.

Attorney David Rosen, counsel for the black firemen "Firebirds," said he agreed to allow the two men to hold the rank of lieutenant until May 6, when the matter will be reviewed. May 6 is the day the city will present to U.S. District Judge Robert C. Zampano the results of a civil service

examination for promotions to lieutenant.

City Corporation Counsel Thomas F. Keves said the two men were appointed to the rank of lieutenant, subject to assignment by Fire Chief Francis J. Sweeney, in 1972, long before the Firebirds filed suit against the city. They have been "acting lieutenants" but have not received lieutenants' pay, Keves said, and Sweeney's assignment of the men will allow them to receive the proper pay.

Keves said one possible problem with the two assignments was that neither he, Rosen, nor

the court was notified by the fire department that the action was to be taken. It was Keves, not Rosen, who first brought up the matter with Zampano while the group was in court on another hitch over the settlement.

That matter involved the timetable for administering the lieutenants' examination. The court settlement requires the city to present the results of the test to Zampano by April 1. Both sides agreed to an extension to May 6 to give the department more time to conduct a refresher course for firemen eligible to take the test.

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Court Order Due On Fire List

By DICK CONRAD
Journal-Courier Staff Reporter

U.S. District Judge Robert C. Zampano is expected to issue an order today regarding a Fire Department eligibility list for promotion to lieutenant.

The order will be a product of talks Monday involving Zampano; and attorneys for the city Civil Service Commission, the Fire Department, and two fire lieutenants, and the Firebirds, an organization of black city firemen.

The Firebirds filed suit in October against the city and Civil Service Commission charging discrimination in the hiring and promotion of blacks. A new and culturally unbiased examination for promotion to lieutenant was part of the December settlement of that suit, and the results of the test were presented to Zampano Monday and reviewed by all parties.

Zampano's order is expected

to include a provision delaying the disclosure of the results of the promotional examination. Participating attorneys indicated there are some apparent mathematical errors in the list that the commission, which computes scores, will be asked to check.

Attorneys indicated also that there are no major problems

over the eligibility list, and that there may be no need for another session with Zampano to iron out present problems.

Also discussed at the meeting Monday was the status of two persons promoted to lieutenant in January in apparent violation of Zampano's December order restricting promotions. Under an agreement reached Feb. 5 by

the Firebirds and the Fire Department, the two were to be allowed to act as lieutenants until Monday's meeting, when their status would be reviewed.

If the two are allowed to remain as lieutenants, the department will have five vacancies to fill from the eligibility list.

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Firemen To Appeal Ruling By Zampano

By DICK CONRAD
Journal-Courier Staff Reporter

City firemen late Wednesday voted to appeal a federal court order regulating promotions in the rank of lieutenant in the Fire Department.

Asking as the Ad Hoc Committee to Save Civil Service in New Haven, some 150 firemen voted to hire an attorney and fight an order issued Aug. 31 by U.S. District Judge Robert C. Zampano.

Zampano on that day released

the results of an examination taken in April so firemen wishing to be promoted to lieutenant. He ordered that seven of the next 21 promotions be from among qualified minority firemen.

After voting Wednesday, committee organizers Salvatore Serlitti and John Reardon began collecting funds for the fees of the attorney. Daniel Sacaria of Bridgeport. Reardon would not say how much was

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Partial Accord Reached Nov. 13

Progress In Fire Rift

By DICK CONRAD
Journal-Courier Staff Reporter

City officials and black firemen reached partial agreement Monday on the firemen's hiring and promotion discrimination suit against the city.

After meeting privately for three hours with U.S. District Judge Robert C. Zampano, the two sides agreed to allow 18 recruits, who finished training Friday, to begin work today. Zampano had ordered, when the suit was filed in October, that the 18, along with 17 lieutenants promoted to captain, not be assigned to permanent positions until the suit was settled.

The suit, filed by the Firebirds, a group of black city firemen, charges the city, the Civil Service Commission, and the Fire Board with discrimination in the hiring and promotion of minority group members.

Firebird attorney David N. Iosco said Monday that the two sides were "narrowing the

gap" between them while said Zampano asked attorneys for all parties to consult with their clients and report back to him Nov. 20.

Monday's meeting was the fourth private session for Zampano, the Firebirds, and city attorneys. Zampano reportedly is becoming angry at the apparent inability of the two sides to settle their differences, and informed attorneys that if the suit is not settled Tuesday in

his chambers, he will schedule a public session in open court.

Under the terms of Monday's agreement, the 18 recruits will technically remain in training. They will, however, move from the city's fire training school to fire houses and do their training while performing normal firefighting duties.

Rosen said the two sides discussed and reviewed a lot of things at Monday's meeting.

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(Continued from Page 1)

ing Frank Graziano, counsel for the Civil Service Commission, said some progress had been made in settling the Firebird's suit.

The Firebirds in June filed a complaint with the Equal Employment Opportunity Commission, charging the city with hiring and promotion discrimination. Only 18 of the 502 men in the department are black, and there are no Spanish-speaking firemen.

In August, the fire board hired 18 recruits, only two of whom are black, and promoted 17 lieutenants to captain, with no blacks among those promoted. The Firebirds then filed suit in federal court.

The Fire Department hopes to use the newly trained and appointed men to fill a third battalion. Fire Chief Francis J. Sweeney had hoped to begin making the necessary assignment later this month.

Estimated, but not yet definite, is the amount of a new \$400,000 with which the Firebirds are raising.

Sacaria, the attorney, challenged correctness of a similar court ruling in Bridgeport.

The lawyer is not connected with the Firebirds. Local 225 of the International Association of Fire Fighters.

Union President John R. Rouske said Wednesday that officials of the organization have informed him that they cannot rule out a court ruling before Dec. 1. Judge Robert C. St. Rouske had hoped to have international help in finding an equal labor practice for the Firebirds.

Also Wednesday, the Civil Service Commission turned down a request from The Journal-Courier to see the scores of persons passing the April examination Commission Personnel Coordinator Frank M. Graziano answered in writing that the commission feels that issuance of the grades would be in violation of Zampano's order.

Reardon said the committee was formed to "prevent people from being promoted who should not be promoted." He maintained that the committee's actions "don't have any racial overtones."

None of the department's 18 blacks attended either the committee meeting or the union meeting which preceded it. The meetings were held at the Elks Lodge on Whalley Avenue.

Firemen Begin Minority Recruiting

By DICK CONRAD

Journal-Courier Staff Reporter

The New Haven Fire Department today begins a court-ordered minority recruitment drive designed to increase the number of black and Puerto Rican firefighters on the city's fire department.

The month-long drive will begin at the offices of the Recruitment and Training Program (RTP) at 156 Dixwell Ave. Acting recruitment Lt. Earl Geyer and two black fire-fighters will be on hand to answer questions about their job on the city's fire department.

The Civil Service Commission

will move to the offices of the United Newhallville Organization (UNO) for three days. Eventually the men will visit each of the city's minority neighborhoods.

Geyer and the 17 other black firemen filed suit in federal court Dec. 5, charging the department to substantially increase its minority ranks and increase its minority ranks through a "vigorously" recruiting drive.

Sixteen of the next 24 firemen hired must be from qualified minority group applicants, according to the court order. The department has 18 blacks and no Puerto Rican fire-fighters.

Eighteen of the next 24 firemen will add two hours of his own time to the regular seven-hour day.

"I am sure people will come to apply," Geyer said. "We had 70 people at an orientation meeting last week before we did any publicity."

The lack of jobs in the community, too, will boost the department's effort. "A lot of people are out of work," Geyer claimed. "Any who would not have considered joining the fire department several years ago now jump at the chance."

Geyer said he does not expect potential white applicants to be discouraged from applying because of the strong effort to recruit nonwhites.

The section of the Firebirds' court suit complains that the department's height and weight limits discriminate against Spanish-speaking persons. The court order, however, does not mention the limits, and Geyer said the Firebirds will not press the city Civil Service Commission to revise the limits.

"If those people (Spaniards) want to talk to the Civil Service

City, Firebirds Cite Progress In 5th Meeting

Attorneys for New Haven and black city firemen Tuesday reported substantial progress has been made toward settling the firemen's hiring and promotion discrimination suit against the city.

Attorneys had their fifth private meeting with U.S. District Judge Robert C. Zampano Tuesday afternoon, and both sides said they are near accord on major issues in the suit, filed Oct. 5 by the Firebirds, a group of black city firemen.

The suit charges the city, the Civil Service Commission, and the Fire Board with discrimination in the hiring and promotion of minority group members.

Firebird attorney David N. Rosen said Tuesday that attorneys will meet Monday, minus Zampano, but will return to the judge's chambers Nov. 23. Rosen said he is optimistic that some issues in the suit will be settled then.

Attorneys say they hope to have some agreement today that will allow the Fire Department to permanently assign 18

recruits and 17 recently-promoted captains. The men are integral to the department's plan to add a third battalion, but Zampano ordered when the suit was filed that they not be assigned until some accord was reached.

Zampano modified his order Nov. 12 to allow the recruits, who finished training Nov. 9, to be temporarily assigned to fire houses.

DICK CONRAD

Zampano Sets Hearing For Monday

Fire Promotion Order Challenged

By DICK CONRAD
Journal-Courier Staff Reporter

A group of city firemen has begun its challenge of a federal court order regulating promotions to lieutenant in the Fire Department.

The National Committee to Save Civil Service in New Haven has filed papers in U.S. District Court asking Judge Robert C. Zampano to reopen his Aug. 30 order and let the committee become an intervenor in new discussions. Meanwhile, a spokesman for the committee said he expects the group to collect \$20,000 from firemen and outside donations to pay legal fees.

The action centers on a suit filed in October by a group of black firemen, the Firebirds, against the city and Civil Service Commission. The suit alleges discrimination in the hiring and promotion of minority group persons.

In response to the suit, a new examination for promotion to lieutenant was developed and administered, and the results were released by Zampano Aug. 30. Zampano has scheduled a court hearing for Monday on the committee's request.

The committee says in court papers that it believes the court order "permits and orders promotions to be made on a basis of race and not merit" in violation of the legal rights of committee members.

The committee claims to have the "support of a vast majority of non-minority fire fighters of all races."

The stated goal is to "insure that hiring and promotions in municipal fire departments, and in particular in New Haven, are not based on race, religion, or ethnic origin."

The committee's attorney is Daniel Sagarin of Bridgeport, who successfully appealed a similar court ruling affecting that city's police department.

Zampano is asked to issue an order restraining the Fire Department from making appointments pursuant to the list he released. The committee also seeks \$100,000 in damages.

Zampano's response to the committee's requests will either open the door to more negotiations in federal court here.

or force a direct appeal to the U.S. Court of Appeals for the Second Circuit in New York City.

Zampano's order forces the Fire Department to make seven promotions out of the next 22 from among qualified minority firemen. There are seven blacks among the first 22 per-

sons on the promotional list.

The committee says in the court papers that it was not adequately represented in the long series of private court discussions by any of the parties to the suit.

Those parties were city Corporation Counsel Thomas F. Keyes Jr., Civil Service Commission Personnel Coordinator Frank M. Grazioso, attorneys for the Firebirds, and Atty. W. Paul Flynn.

Committee spokesman Albert Serletti said the appeal is expected to cost his group \$15,000. Firemen have been asked to contribute \$50 each, a plan that Keyes said generate \$10,000.

Fire, Civil Service Push On For Minority Enrollment

By DICK CONRAD
Journal-Courier Staff Reporter

Fire Department and city Civil Service Commission officials are beginning efforts they hope will lead to an increase in the number of firemen from minority groups.

Fire Chief Francis J. Sweeney said Tuesday that he, civil service attorney Frank M. Grazioso, and other fire department officials have met several times to discuss the requirements of a December federal court order mandating increased minority employment in the department.

The order was issued by U.S. District Judge Robert C. Zampano in settlement of a suit

filed by the Firebirds, a group of black city firemen, charging the city, the fire department, and the civil service commission with discrimination in the hiring and promotion of minority group members.

On aspect of the department's plans, however, appears to violate a provision of the department's timetable. They have not been informed of the department's timetable, according to Grazioso.

Koskoff and co-counsel Attorney David N. Rosen both said they have not been informed of the department's timetable.

Koskoff said he and Rosen will insist on compliance with the order by the department. "We believe there is a good reason to modify the court order," he said.

The refresher course will not finish until mid-April, Grazioso said, because the department

calls on the department to course will have to be repealed submit to him "not later than April 1, 1974" a "proposed new to allow firemen from all shifts to attend classes during convenient hours." Lieutenant Michael Koskoff said the list would be derived from the test.

Koskoff and co-counsel Attorney David N. Rosen both said they have not been informed of the department's timetable.

Koskoff said he and Rosen will insist on compliance with the order by the department. "We believe there is a good reason to modify the court order," he said.

The refresher course will not

finish until mid-April, Grazioso said, because the department

will be given.

Zampano's order, however, has several shifts. Units of the

Sweeney said the entrance exam will follow an intense recruitment drive concentrated in minority areas. He noted there are four vacancies at the lieutenant level. After an examination is given for promotion to that level, an examination is given for entrance to the department, according to Grazioso.

Grazioso said he has communicated with several national testing agencies about providing tests for minorities and entrance the drive, including sending exams to give information about tests and the department, and making firemen information centers about the tests and departmental duties.

Grazioso said he has communicated with several national testing agencies about providing tests for minorities and entrance the drive, including sending exams to give information about tests and the department, and making firemen information centers about the tests and departmental duties.

Firemen Due For Wait

On Lieutenancy Exams

Firemen who took an examination in April for promotion to lieutenant will have to wait at least another week to find out how they did on that test.

The Fire Department was ordered May 22 by U.S. District Judge Robert C. Zampano not to make the list of examination scores public until further word from the court. Attorneys involved in a suit that centers partly around the list met with Zampano Monday to discuss some apparent problems with the list, but were unable to settle their differences.

Attorneys for the city and Civil Service Commission are to report back to Zampano Jan. undisclosed matters next week.

The city and Civil Service Commission were sued in October by the Firebirds, a group of

black civil firemen. The Firebirds charged discrimination in the hiring and promotion of persons from minority groups.

Part of the December settlement of the suit was the creation of "a new and culturally unbiased examination for promotion to lieutenant."

Attorneys have met twice with Zampano since the examination was given. After the first meeting, they indicated no major problems over the promotional grade list. Indications Monday however, were that there is considerable disagreement over the list. Both sessions were in Zampano's chambers and attorneys have refused to comment on exactly what is being discussed.

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Firemen Burned By Exam Results

Sept 1977

BY BICK CONRAD
Journal-Courier Staff Reporter
The city Civil Service Commission was criticized Sunday for refusing to release the results of a fire department promotional examination while making public a similar police department promotional list.

John B. Rourke, president of Local 825 International Association of Fire Fighters, said his union wants to know "why there is a double standard" with regard to the two departments.

Civil Service Commission Atty. Frank M. Grazioso said Sunday that the commission is

complying with a federal court order by not releasing the results of an examination firemen took in April for promotion to lieutenant.

The commission Friday made public the names and grades of persons who passed examinations Aug. 28 for promotion to sergeant and lieutenant in the city police department.

Rourke charged that firemen wishing to discover how they did on the lieutenant's examination have been told at the Civil Service office that the grades cannot be released.

U.S. District Judge Robert C.

Zampano Aug. 30 produced a lieutenants' promotional list apparently developed from the April exam. The list has 67 names, but no grades. The commission has always released grades with names.

Zampano acted in response to a suit filed by black firemen charging hiring and promotional discrimination in the fire department.

Rourke said firemen believe Zampano took the names of blacks who did not do well on the test and placed them at the top of the list so they can be promoted.

Firemen Wednesday appointed a committee to consider an appeal of Zampano's order. It will report back to firemen this Wednesday. Rourke said he expects the union to file an unfair

labor practice against the city with the National Labor Relations Board.

Grazioso confirmed that firemen asking for their grades are referred to federal court.

"It is clear that the list was issued by the court," he said. "If we are ordered by the court to do anything, we will do it."

The only power to release

scores, he said, comes under city regulations. Zampano's order declares those regulations null and void to the extent needed for compliance with the terms of the order, but the order does not specifically deal with release of any information regarding the test.

Grazioso said the commission has received no written requests for the scores from firemen, and that the commission will decide what to do about such requests when one is received. He acknowledged a re-

quest from The Journal-Courier, but said "you are not going to be allowed to see the scores."

Grazioso noted that the commission has always released scores on its own maintaining what he called "an open door policy."

The commission however has had since April 17 a list of questions submitted by The Journal-Courier seeking information about the latest police department entrance examina-

tion. There has been no response to those questions.